

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Gloria Schmanek

**SUBJECT:** EARLY COUNCIL PACKET

**DATE:** January 27, 2014

Approved 

Date 1/27/14

**EARLY DISTRIBUTION COUNCIL PACKET FOR**  
**FEBRUARY 11, 2014**

Please find attached the Early Distribution Council Packet for the February 11, 2014 Council Meeting.

**3.x Approval of the 2013-2014 Mid-Year Budget Review Report.**

**Recommendation:**

- (a) Approve the 2013-2014 Mid-Year Budget Review Report.
- (b) Adopt related Appropriation Ordinance and Funding Sources Resolution amendments in various funds as detailed in Section III (Recommended Budget Adjustments and Clean-Up Actions) of the 2013-2014 Mid-Year Budget Review Report.

CEQA: Not a Project, File No. PP10-067(b), Appropriation Ordinance. (City Manager's Office)

**TO BE DISTRIBUTED ON JANUARY 31, 2014**

**3.x Terms of an Agreement with the International Union of Operating Engineers, Local No. 3.**

**Recommendation:** Adopt a resolution to approve the terms of a collective bargaining agreement between the City and the International Union of Operating Engineers, Local No. 3 (OE#3), and authorize the City Manager to execute an agreement for a term from July 1, 2013 to June 30, 2015. The agreement is subject to ratification by OE#3 membership. CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)

**4.x Report on Bids and Award of Contract for Roberto Antonio Balermino Park Project.**

**Recommendation:** Report on bids and award of a construction contract for 5980 - Roberto Antonio Balermino Park to the sole bidder, Suarez & Munoz Construction, Inc., in the amount of \$1,789,000, and approve a five percent contingency in the amount of \$89,450. CEQA: Exempt, File No. PP08-166. Council District 7. (Public Works)

**7.x Actions Related to the Implementation of Energy and Utility Conservation Measures Identified by Chevron Energy Solutions.**

**Recommendation:**

- (a) Adopt a resolution approving for implementation the energy and utility conservation measures ("ECMs") identified by Chevron Energy Solutions in Bundle 1A, and authorizing the Director of Public Works to do the following contingent upon the City obtaining the necessary financing and subject to the appropriation of funds:
  - (1) Negotiate and execute a Bundle 1A Energy Services Agreement with Chevron Energy Solutions to implement the Bundle 1A ECMs for a maximum compensation of \$2,979,320;
  - (2) Establish a 15% contingency for the Bundle 1A Energy Services Agreement in the amount of \$424,398; and
  - (3) Negotiate and execute one or more amendments to the Bundle 1A Energy Services Agreement to increase the maximum compensation by an aggregate amount not to exceed the contingency to pay for any unexpected work necessary to complete the project.
- (b) Adopt a resolution authorizing the Director of Public Works to do the following contingent upon the City obtaining the necessary financing and subject to the appropriation of funds:
  - (1) Approve for implementation the ECMs identified by Chevron Energy Solutions in draft Bundle 1B if the Director concurs with Chevron Energy Solutions' analysis that the ECMs are feasible; and
  - (2) Negotiate and execute a Bundle 1B Energy Services Agreement with Chevron Energy Solutions to implement Bundle 1B for a maximum compensation of \$18,113,709 contingent on each of the following:
    - (a) The Director approving the ECMs identified in draft Bundle 1B, and
    - (b) Chevron Energy Solutions having completed implementation of Bundle 1A in accordance with the Bundle 1A Energy Services Agreement and the Director's determination that the performance of the Bundle 1A ECMs are providing the utility/energy savings set forth in the applicable investment grade audit prepared by Chevron Energy Solutions; and
    - (c) Chevron Energy Solutions completes Bundle 1A on schedule and at a cost that does not exceed Chevron's cost estimates, and provides quality work and customer service as determined by the Director of Public Works; and
  - (3) Establish a 15% contingency for the Bundle 1B Energy Services Agreement in the amount of \$2,717,056; and

HONORABLE MAYOR AND CITY COUNCIL

January 27, 2014

**Subject: Early Distribution Packet**

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- (4) Negotiate and execute one or more amendments to the Bundle 1B Energy Services Agreement to increase the maximum compensation by an aggregate amount not to exceed the contingency to pay for any unexpected work necessary to complete the project.

CEQA: Exempt, File Nos. PP 13-111, PP 13-112, PP 13-113, PP 13-114, PP 13-115, PP 13-116, PP 13-117, PP 14-003, PP 14-004. (Public Works)

These items will also be included in the Council Agenda Packet with item numbers.

/s/

GLORIA SCHMANEK

Agenda Services Manager





# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Alex Gurza

**SUBJECT:** SEE BELOW

**DATE:** January 28, 2014

Approved

Date

1/27/14

**SUBJECT: APPROVAL OF THE TERMS OF AN AGREEMENT WITH THE  
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL  
NO. 3 (OE#3)**

## RECOMMENDATION

Adopt a resolution to approve the terms of a collective bargaining agreement between the City and the International Union of Operating Engineers, Local No. 3 (OE#3), and authorizing the City Manager to execute an agreement with a term of July 1, 2013, through June 30, 2015.

## OUTCOME

Adoption of the resolution and authorization to execute an agreement would result in a collective bargaining agreement between the City of San Jose and the International Union of Operating Engineers, Local No. 3 (OE#3) for the period of July 1, 2013, through June 30, 2015.

## BACKGROUND

The City of San Jose's most recent collective bargaining agreement with OE#3 expired on June 30, 2011. OE#3 currently represents approximately 672 full-time budgeted positions. This unit includes employees in the classifications of Maintenance Worker I/II, Parking Traffic Control Officer, Maintenance Assistant, Groundswoker and Wastewater Operator I/II/III. Negotiations on a successor Memorandum of Agreement (MOA) with OE#3 had commenced in February 2011, and the City and OE#3 reached a Mediated Tentative Agreement; however, the City was notified that the OE#3 membership voted down the Mediated Tentative Agreement. The terms contained in the City's Last, Best, and Final Offer were implemented by the City Council on May 31, 2011.

In March 2013, negotiations with OE#3 on a successor agreement commenced and the parties met approximately twelve (12) times, prior to the parties engaging in pre-impasse mediation on or about December 20, 2013 and January 22, 2014. The mediation on or about January 22, 2014,

resulted in a Mediator's Recommended Settlement. OE#3 will present the Mediator's Recommended Settlement to its membership for ratification and should the membership ratify the recommended settlement and the City Council approve it, the terms contained in the Mediator's Recommended Settlement will be implemented.

### **ANALYSIS**

A complete copy of the Mediator's Recommended Settlement is attached. The following is a summary of the key provisions. Some changes made in the Recommended Settlement were for clarification purposes only, but are included in the attached Recommended Settlement.

<b>Term</b>	July 1, 2013 – June 30, 2015. The parties agreed to a reopener on all economic issues in the second year.
<b>General Wage Increase</b>	Effective <b>February 16, 2014</b> , all employees represented by OE#3 will receive a base pay increase of 2.0%. This will result in both the top and bottom step of the pay range being increased by 2.0%. The wage increase will not be retroactive.
<b>Lump Sum Payment</b>	One-time nonpensionable lump sum payment of \$450 payable within two (2) pay periods after February 11, 2014, for full-time employees who were employed in OE#3 represented positions on July 1, 2013, and are still employed in OE#3 represented positions effective February 16, 2014.
<b>Substance Abuse Program and Policy</b>	The Substance Abuse Program and Policy section in the City Policy Manual will apply to employees represented by OE#3.
<b>Personal Leave</b>	Effective payroll calendar year 2014, full-time employees shall be entitled to 24 hours of personal leave per payroll calendar year (currently 16 hours).
<b>Disability Leave Supplement</b>	Effective <b>February 16, 2014</b> , the Disability Leave Supplement is eliminated. Employees will be allowed to integrate accrued vacation, then earned compensatory time, and then accrued sick leave. No employee shall receive an amount, including any temporary disability payments, in excess of their regular salary.
<b>Call Back Pay</b>	Effective <b>February 16, 2014</b> , employees who are called back to work will be credited for the time worked, or for three (3) hours, whichever is greater, at the <b>1.5</b> rate.
<b>Standby Pay</b>	Effective <b>February 16, 2014</b> , employees who are required to perform standby duty will be credited with one hour compensation at the <b>1.5</b> rate for each eight (8) hour shift or portion thereof that the employee performs standby duty.

**Shift Differential**

Effective **February 16, 2014**, swing shift differential will be increased from \$1.50/hour to \$1.55/hour and grave shift differential will be increased from \$1.50/hour to \$1.75/hour.

**Overtime Eligibility**

Currently, paid time off is not deemed as time worked for the purposes of calculating eligibility for overtime. Effective **February 16, 2014**, paid holiday leave shall be considered as time worked for the purpose of calculating eligibility for overtime.

**Education Reimbursement**

Education reimbursement will be increased from \$500 annually to \$750 annually for college accredited courses. Up to \$500 of the \$750 may be used for non-college accredited courses.

**Sick Leave Payout –  
New Employees hired  
on or after  
September 30, 2012**

Any employee hired on or after September 30, 2012, shall not be eligible for sick leave payout.

**Sick Leave Payout –  
Employees  
who retired between  
January 1, 2012, and  
February 16, 2014**

Former employees who retired on or after January 1, 2012, and before **February 16, 2014**, will be offered a sick leave payout in exchange for a release of claims by the retired employee.

Former employees who retired on or after January 1, 2012, and before **February 16, 2014**, will be eligible for a sick leave payout in the amount of unused sick leave hours accrued as of December 31, 2011, or the date of their retirement, whichever is less, subject to the provisions contained in the Memorandum of Agreement.

**Sick Leave Payout –  
Current Employees  
hired on or before  
September 29, 2012**

For employees hired on or before September 29, 2012, sick leave payout shall be made to full-time employees who are members of the Federated City Retirement System at the time of retirement or death according to the provisions contained in the Memorandum of Agreement.

Effective **June 22, 2013**, for purposes of calculating sick leave payout, employees' sick leave balances and hourly rates shall be frozen. Any sick leave usage after June 22, 2013, will come first from the sick leave balance accrued after June 22, 2013. An employee will continue to accrue sick leave after June 22, 2013, but it may not be used for sick leave payout purposes.

If an employee does not have available sick leave hours accrued after June 22, 2013, and uses sick leave which reduces their sick leave balance as of June 22, 2013, the sick leave hours available for sick leave payout will be reduced. An employee may not reestablish their sick leave balance subject to payout if such balance is reduced by use.

Payout shall be determined as follows: Percent of employees' hourly rate of pay as of June 22, 2013, multiplied by the total number of accumulated and unused hours of sick leave as of June 22, 2013 (minus any sick leave hours as of June 22, 2013, which were used):

Less than 400 hours: Hours accumulated as of June 22, 2013 x  
50% of hourly rate as of June 22, 2013

400-799 hours: Hours accumulated as of June 22, 2013 x  
60% of hourly rate as of June 22, 2013

800-1200 hours: Hours accumulated as of June 22, 2013 x  
75% of hourly rate as of June 22, 2013

### **Protective Eyewear**

The City agrees to reimburse eligible employees who require the use of prescription lenses and are in positions that require the use of protective safety glasses for the purchase of protective prescription safety glasses for up to \$150.00 for full-time employees when it is determined by the Director of Human Resources, or designee, that protective prescription safety glasses are required. The City will replace protective prescription safety glasses as needed, but no more than once per calendar year. An individual may select an approved style that is more expensive than the City maximum by paying the difference.

### **Holidays**

Effective **February 16, 2014**, employees are entitled to paid holiday leave on each of the holidays specified in the Memorandum of Agreement if they are on paid status the day before and the day after the holiday.

### **EVALUATION AND FOLLOW-UP**

The contract language contained in the agreement reached on June 11, 2013, related to Retiree Healthcare will be incorporated into the OE#3 Memorandum of Agreement.

The City and OE#3 agree to meet and confer over retirement benefits upon request of either party in the event that the pension modification ballot measure, also known as Measure B, in part or in whole, is declared invalid or otherwise modified or changed by any court of competent jurisdiction or any other administrative process, or by any applicable State or Federal law or regulation.

Negotiations between the City and OE#3 will commence within 14 days upon notice from either party that any action referenced in the previous paragraph has occurred. The City and OE#3 will

negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

The City and OE#3 agree to meet and confer over economic provisions contained in this Agreement during the term of the Agreement, but no earlier than July 1, 2014. This may include but is not limited to wages and benefits provided by the City.

Negotiations between the City and OE#3 shall commence within 14 days upon notice by either party, but no earlier than July 1, 2014. The City and OE#3 shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

### **PUBLIC OUTREACH/INTEREST**

- ☐ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.  
**(Required: Website Posting)**
- ☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

While this action does not meet any of the criteria listed, this memorandum will be posted on the City's website in advance of the February 11, 2014, Council Agenda.

### **COORDINATION**

This memorandum was coordinated with the City Manager's Budget Office and the City Attorney's Office.

### **COST SUMMARY/IMPLICATIONS**

The ongoing increased annual direct cost of the 2% general wage increase is approximately \$1.2 million in all funds (approximately \$425,000 in 2013-2014), of which approximately \$360,000 is in the General Fund (approximately \$130,000 in 2013-2014). The cost of the non-pensionable lump sum will be approximately \$302,400. This funding is contained in the Employee Compensation Planning Reserves in the General Fund and all other special funds, as appropriate, in the 2013-2014 Adopted Operating Budget. In the 2013-2014 Mid-Year Budget Review, scheduled for City Council consideration on February 11, 2014, funds are recommended to be reallocated from the Employee Compensation Planning Reserve to individual department



HONORABLE MAYOR AND CITY COUNCIL

January 28, 2014

**Subject: Approval of Terms of an Agreement with OE#3**

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personal services budgets to cover this cost. If this memorandum is not approved, savings in those personal services budgets will be realized at the end of the year. These figures do not include the other costs associated with the changes in compensation for education reimbursement, shift differential, sick leave payout, and protective eyewear that will be incurred during the term of this agreement.

**CEQA**

Not a Project, File No. PP10-069(b), Personnel Related Decisions.



Alex Gurza  
Deputy City Manager

For questions please contact Alex Gurza, Deputy City Manager, at (408) 535-8155.

**2013 OE#3 NEGOTIATIONS  
MEDIATOR'S RECOMMENDED SETTLEMENT**

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**TERM**

July 1, 2013 – June 30, 2015

**WAGES**

**Year One (1):**

2% general wage increase effective the first pay period following ratification by the membership and approval by the City Council.

- One-time lump sum payment of four hundred and fifty dollars (\$450.00) payable within two (2) pay periods following ratification by the OE#3 membership and approval by the City Council for full-time employees who were employed in OE#3 represented positions on July 1, 2013, and are still employed in OE#3 represented positions effective the pay period following ratification and Council approval.

**SHIFT DIFFERENTIAL**

See Attached

**PROTECTIVE PRESCRIPTION SAFETY GLASSES**

See Attached

**PROTECTIVE CLOTHING**

See Attached

**SAFETY**

See Attached

**SICK LEAVE PAYOUT**

See Attached

**VACATION AND PERSONAL LEAVE**

See Attached

**CAREER DEVELOPMENT**

See Attached

**CALL BACK AND STANDBY PAY**

See Attached

**LEAVES OF ABSENCE**

See Attached

**DISABILITY LEAVE SUPPLEMENT**

See Attached

*Walter H. [Signature]*  
1/24/14

*[Signature]*  
1/22/14

**2013 OE#3 NEGOTIATIONS  
MEDIATOR'S RECOMMENDED SETTLEMENT**

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**SUBSTANCE ABUSE POLICY**

See Attached

**OVERTIME CALCULATION**

See Attached

**TENTATIVE AGREEMENTS**

- Housekeeping - Tentative Agreement Reached on May 1, 2013
- Higher Class Pay - Tentative Agreement Reached on May 22, 2013
- Holidays - Tentative Agreement Reached on May 22, 2013
- Grievance Procedure - Tentative Agreement Reached on May 22, 2013
- Health and Dental In Lieu - Tentative Agreement Reached on May 22, 2013

**SIDE LETTER AGREEMENTS**

- Retiree Healthcare Stakeholder Solutions Working Group and Negotiations – Side Letter Agreement Reached on June 11, 2013

**REOPENERS**

- Retiree Healthcare – The contract language contained in the agreement reached on June 11, 2013, shall be incorporated into the OE#3 Memorandum of Agreement.
- Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over retirement benefits upon request of either party in the event that the pension modification ballot measure, also known as Measure B, in part or in whole, is declared invalid or otherwise modified or changed by any court of competent jurisdiction or any other administrative process, or by any applicable State or Federal law or regulation.

Negotiations between the City and OE#3 shall commence within 14 days upon notice from either party that any action referenced in the previous paragraph has occurred. The City and OE#3 shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

- Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over economic provisions contained in this Agreement during the term of the Agreement, but no earlier than July 1, 2014. This may include but is not limited to wages and benefits provided by the City.

Negotiations between the City and OE#3 shall commence within 14 days upon notice by either party, but no earlier than July 1, 2014. The City and OE#3 shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

*Benembi*  
1/22/14

**2013 CITY OF SAN JOSE – OE#3 NEGOTIATIONS  
MEDIATOR'S RECOMMENDED SETTLEMENT**

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**SHIFT DIFFERENTIAL**

City Counterproposal:

**ARTICLE 5 WAGES AND SPECIAL PAY**

5.3 Shift Differential. Eligible employees, as defined herein, regularly assigned to work a swing shift shall be paid a shift differential of \$1.550 per hour for each eligible hour, as defined herein, to the nearest fifteen (15) minutes, of work performed. Eligible employees, as defined herein, regularly assigned to work a graveyard shift shall be paid a shift differential of \$1.75 per hour, as defined herein, to the nearest fifteen (15) minutes of work performed.

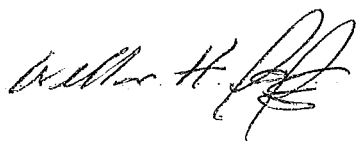
5.3.1 Eligibility and Application. To be eligible for payment of shift differential, an employee must be assigned to an on-going, regular shift of eight (8) hours or more which is regularly scheduled to start between the hours of:

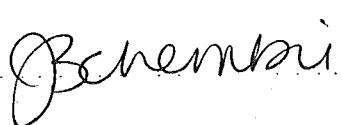
- a) 2:00 p.m. and 11:59 p.m. (i.e. swing shift), or
- b) 12:00 midnight and 5:59 a.m. (i.e. graveyard shift)

If the employee's shift starts within the time period defined above and the employee works a minimum of two (2) hours within that time period, the employee shall be compensated with shift differential for the entire shift.

If the employee's shift starts within the time period defined above and the employee works less than two (2) hours within that time period, the employee shall be compensated with shift differential for the number of hours of work actually performed within that time period.

5.3.2 Except as otherwise required by applicable State or Federal law, shift differential pay shall not be included as regular compensation in computing other benefits.

 1/22/14

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City of San Jose  
January 22, 2014

**2013 CITY OF SAN JOSE – OE#3 NEGOTIATIONS  
MEDIATOR'S RECOMMENDED SETTLEMENT**

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**WAGES AND SPECIAL PAY**

City Counterproposal:

**5.21 Protective Prescription Safety Glasses.**

5.21.1 The City agrees to reimburse eligible employees who require the use of prescription lenses and are in positions that require the use of protective safety glasses for the purchase of protective prescription safety glasses for up to \$150.00 for full-time employees when it is determined by the Director of Human Resources, or designee, that protective prescription safety glasses are required. The City will replace protective prescription safety glasses as needed, but no more than once per calendar year. An individual may select an approved style that is more expensive than the City maximum by paying the difference.

*Will H. Fofe*  
1/24/14

City of San Jose  
January 22, 2014

*Bchemeri*  
1/22/14

2013 CITY OF SAN JOSE – OE#3 NEGOTIATIONS  
MEDIATOR'S RECOMMENDED SETTLEMENT

**WAGES AND SPECIAL PAY**

City Proposed Language:

5.14 **Protective Clothing.**

5.14.1 ~~The City shall provide a voucher for the purchase of protective footwear for up to \$150 for full time employees when it is determined by the Director of Human Resources, or designee, that protective footwear is required. Protective footwear shall meet established Occupational Safety and Health Administration's (OSHA) standards, current American National Standard for Personal Protection - Protective Footwear standards and requirements as determined by the City Safety Officer or designee. The City will replace protective footwear on an annual basis, except for the hot gang boots which will be replaced semi-annually. An individual may select an approved style that is more expensive than the City maximum by paying the difference. Employees shall be allowed to obtain a voucher from any vendor(s) authorized by the City. The City agrees to reimburse eligible employees for the purchase of protective footwear for up to \$150 for full-time employees when it is determined by the Director of Human Resources or designee that protective footwear is required for the full-time employee. Protective footwear shall meet established Occupational Safety and Health Administration's (OSHA) standards, current American National Standard for Personal Protection- Protective Footwear standards and requirements as determined by the City Safety Officer or designee. The City will replace protective footwear as needed, but no more than once per calendar year. An individual may select an approved style that is more expensive than the City maximum by paying the difference.~~

*William H. [Signature]*  
1/24/14

City of San Jose  
January 22, 2014

*Ben [Signature]*  
1/22/14

**2013 CITY OF SAN JOSE – OE#3 NEGOTIATIONS  
MEDIATOR'S RECOMMENDED SETTLEMENT**

**SAFETY**

**Article 11 SAFETY**

**City Proposed Language:**

- 11.1 The City shall provide a reasonably safe and healthy working environment in accordance with applicable State and Federal laws and regulations. The Union agrees that where safety devices or protective equipment is required or furnished, its use shall be mandatory.
- 11.2 An employee who believes their work assignment is unsafe or believes a safety violation exists and for that reason refuses to perform such assignment, will first report such unsafe conditions to their immediate supervisor and try and resolve it at that level. The employee may at any time request that a union representative and an OE#3 Safety Officer be present for any part of the process. ~~shall be assigned other duties, if other duties are available, and no other employee shall be assigned the work assignment in dispute until after a determination has been made by the City's Safety Officer. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the above determination. Prior to being placed on such leave, however, the employee may request the presence of the appropriate Union representative.~~
- 11.3 If the employee is not satisfied with the response of the immediate supervisor, the employee may report the unsafe conditions to the Department Director or Designee or the Department Safety Officer and try to resolve it at that level.
- 11.43 If the employee is not satisfied with the response of the Department Director or Designee or the Department Safety Officer, the employee may request that the City make a determination as to the safeness of the work assignment in accordance with Cal/OSHA regulations. If the City is asked to make a determination, an employee will be assigned other duties if other duties are available while an investigation is underway. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the above determination. No other employee shall be assigned the work assignment in dispute until after a determination is made by the City's designated safety official. The employee's immediate supervisor shall immediately request the City's Safety Officer to make a determination as to the safeness of the work assignment in question. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to the refusal to perform. If the employee disagrees with the determination of the City's Safety Officer and continues to refuse to perform the assignment, the employee shall be assigned other duties, if such other duties are available, and a prompt request for a determination by the State of California Division of Occupational Safety and Health shall be made. Pending such determination, the assignment shall not be given to another employee. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the determination of the Division of Occupational Safety and Health. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to refusal to perform.
- 11.54 No provisions of this Article shall be subject to the grievance procedures of this Agreement. If the Union is not satisfied with the City's determination, the Union can

*William H. [Signature]* 1/22/14

*[Signature]*  
1/22/14

**2013 CITY OF SAN JOSE – OE#3 NEGOTIATIONS**  
**MEDIATOR'S RECOMMENDED SETTLEMENT**

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~~request to meet with the Office of Employee Relations to discuss the City's determination. The determination by the Division of Occupational Safety and Health of the safeness or unsafeness of the work assignment shall not be subject to the grievance procedure.~~

- ~~11.5- Upon request of either the employee or the representative of the Division of Occupational Safety and Health, the appropriate Union representative shall be permitted to accompany the City Safety Officer, or the representative of the Division of Occupational Safety and Health, or both, during the inspections of the questioned work assignment. Neither the employee nor the appropriate Union representative shall suffer any loss of compensation for time involved in the inspections of the questioned work assignment during their respective regularly scheduled working hours. In no event shall overtime or premium pay be paid for any time spent in such inspections.~~
- ~~11.6- If an employee's immediate supervisor believes that the employee is unable to safely perform a job assignment because of the employee's physical condition then the supervisor shall arrange for immediate medical evaluation of the employee's condition as it relates to the employee's ability to safely perform assigned duties. The employee shall cooperate with such medical evaluation.~~

*William H. [Signature]*  
1/22/14

*Bachembai*  
1/22/14



**2013 CITY OF SAN JOSE – OE#3 NEGOTIATIONS  
MEDIATOR'S RECOMMENDED SETTLEMENT**

**SICK LEAVE PAYOUT**

City Counterproposal:

- 18.2 Any employee hired on or after September 30, 2012, shall not be eligible for sick leave payout.
- 18.3 Upon a release of claims provided by the City being signed by the retiree, retroactive payments shall be made to eligible employees in the Federated City Retirement System, who retired on or after January 1, 2012, and before the date that this proposal is ratified and approved by the City Council, who were eligible for a sick leave payout at the time of their retirement under the requirements contained herein and did not receive the payout because the payouts were eliminated prior to their retirement. Retirees will be eligible for a payout of the amount of unused sick leave hours accrued as of December 31, 2011, or the date of their retirement, whichever is less. Payouts will be based on the provisions contained in Sections 18.5 and 18.6 below. This will resolve any claims related to sick leave payout upon retirement.
- 18.4 For employees hired on or before September 29, 2012, a sick leave payout shall be made to full-time and part-time benefitted employees who are members of the Federated City Retirement System at the time of retirement or death under one of the following scenarios:
- 18.4.1 Federated Retirement Plan. The employee is: a) a member of the Federated Retirement Plan, and; b) retired under the provisions cited in the plan, and; c) credited with at least 15 years of service in this retirement plan, or; d) credited with at least 10 years of service prior to a disability retirement.
- 18.4.2 Separated Employee with Vesting Rights. The employee has: a) separated from service with the City and has not been terminated for cause as defined by San Jose Municipal Code (SJMC) Section 3.04.1370 and; b) retained vesting rights in a retirement system according to provisions in the SJMC, and; c) following such separation, qualifies for retirement and retires under the provisions cited in the code, and; d) has at the time of retirement credit for at least 15 years of service in the applicable retirement plan.
- 18.4.3 Death During Service. The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least 15 years of service in any applicable retirement plan.
- 18.4.4 Death of Separated Employee. The estate of any full-time employee who: a) has separated from service with the City and has not been terminated for cause as defined by San Jose Municipal Code (SJMC) Section 3.04.1370 but had retained vesting rights in a retirement system according to provisions in the SJMC, and; b) dies prior to becoming eligible for retirement allowances as cited under provisions of the SJMC, and; c) has at the time of death credit for at least 15 years of service in the applicable retirement plan.
- 18.5 Effective June 22, 2013, for purposes of calculating a sick leave payout, employees' sick leave balances and hourly rates shall be frozen. This means that an employee will

*William H. Pifer*  
1/22/14

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**2013 CITY OF SAN JOSE – OE#3 NEGOTIATIONS**  
**MEDIATOR'S RECOMMENDED SETTLEMENT**

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receive no more for a sick leave payout, after having met the requirements set forth above, than he or she would have been entitled to on June 22, 2013. Any sick leave usage after June 22, 2013, will come first from the sick leave balance accrued after June 22, 2013. An employee will continue to accrue sick leave after June 22, 2013, but it may not be used for sick leave payout purposes.

For example, if an employee's hourly rate is \$40 and his or her sick leave balance is 1000 hours on June 22, 2013, then if he or she meets the eligibility requirements contained herein, the payout of a sick leave balance at the time of retirement will be based on the formula below, and shall be based on no more than 1000 hours and an hourly rate of no more than \$40. This will occur even if the employee has subsequently earned more than 1000 hours in sick leave or received a pay increase to an hourly rate higher than \$40. In this example, if the employee does not have available sick leave to use that was accrued after June 22, 2013, and uses sick leave and reduces their sick leave balance on June 22, 2013, to 800 hours, they will only be entitled to a sick leave payout of 800 hours, regardless of any sick leave accrued after June 22, 2013. This means that if sick leave payout hours are reduced by usage, they are not able to be re-established in the sick leave balance subject to payout.

18.6 Payout shall be determined as follows.

18.6.1 Payout shall be determined as follows: If a full-time or eligible part-time employee at the time of retirement or death has earned unused sick leave hours, the employee or Estate shall be paid the equivalent of a specified percent of their hourly rate of pay as of June 22, 2013, multiplied by the total number of accumulated and unused hours of sick leave as of June 22, 2013 (minus any sick leave hours as of June 22, 2013, which were used), as follows:

<u>18.6.2 Less than 400 hours -</u>	<u>Hours accumulated as of June 22, 2013 x</u> <u>50% of hourly rate as of June 22, 2013;</u>
<u>or 400 - 799 hours -</u>	<u>Hours accumulated as of June 22, 2013 x</u> <u>60% of hourly rate as of June 22, 2013;</u>
<u>or 800 - 1200 hours -</u>	<u>Hours accumulated as of June 22, 2013 x</u> <u>75% of hourly rate as of June 22, 2013.</u>

18.7 Use of previously accumulated sick leave hours. For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of retirement or death, unused sick leave from prior periods of employment before June 22, 2013, with the City shall be used. However, previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.

*Will H. [Signature]*  
1/22/14

*Bachemba*  
1/22/14

2013 CITY OF SAN JOSE – OE#3 NEGOTIATIONS  
MEDIATOR'S RECOMMENDED SETTLEMENT

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VACATION AND PERSONAL LEAVE

ARTICLE 17 VACATION AND PERSONAL LEAVE

City Proposed Language:

17.4 Personal Leave. Effective the first pay period of each payroll year, each full time employee shall be entitled to a maximum of ~~46~~twenty four (24) hours of personal leave per 26 pay period cycle. Such leave may be scheduled in fifteen (15) minute increments, at any time, subject to approval of the supervisor. Personal leave is not accrued. Any such leave not taken by the date of termination for employees terminating during the year, or by the end of the last pay period in the calendar year for other employees shall not be paid out nor carried over to subsequent years. Under no circumstances, such as promotion, transfer, and/or rehire, shall an employee receive more than twenty four (24) ~~46~~ hours of Personal Leave in any given calendar year.

17.4.1 First Year of Employment. An employee hired after July 1 shall be provided a maximum of ~~eight twelve (8)~~ (12) hours of personal leave in the first calendar year of employment.

*William H. Paff*

City of San Jose  
January 22, 2014

*Bachembu*  
1/22/14

**2013 CITY OF SAN JOSE – OE#3 NEGOTIATIONS  
MEDIATOR'S RECOMMENDED SETTLEMENT**

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**CAREER DEVELOPMENT**

City Counterproposal:

**ARTICLE 5 WAGES AND SPECIAL PAY**

5.12 Career Development. The City is committed to assisting employees with career growth and development and agrees to the following:

5.12.1 Tuition Reimbursement Program. The City will reimburse each employee 100% of expenses incurred, up to ~~\$500.00~~ \$750.00 per fiscal year, for registration, tuition and textbooks for college accredited courses which are either related to or beneficial for the employee's current position or related to or beneficial for a lateral transfer, promotion or other career opportunity within the City service. Section 4.3.1 of the City Policy Manual outlines additional details of the program. ~~This amount~~ Of the \$750.00, up to \$500 may be used for non-college accredited courses, workshops, membership dues in professional associations, professional licenses, and professional certificates as approved by the Department Director or designee.

*William H. [Signature]*  
1/22/14

City of San Jose  
January 22, 2014

*[Signature]*  
1/22/14

**2013 CITY OF SAN JOSE – OE#3 NEGOTIATIONS  
MEDIATOR'S RECOMMENDED SETTLEMENT**

**CALCULATION OF OVERTIME**

City Counterproposal:

- 5.8 Call Back Pay. Any employee who is called back to work after working their scheduled shift and departing from their place of employment shall be credited with overtime for the time worked, or for three (3) hours at the appropriate rate (1.5), whichever is greater. An employee called back to duty shall be entitled to the three-hour minimum call back compensation only once per eight-hour shift. For subsequent call backs during the same shift, the employee shall be credited with the time worked or for one-half hour at the appropriate rate, whichever is greater. This section shall apply on either a workday after the employee has departed from their place of employment or on a day off. It shall not apply to scheduled overtime or during a regular shift. Employees who are called back multiple times during a standby shift shall not receive additional pay until the employee has worked a total of three hours, after which time the employee would be eligible for additional pay, but only for actual hours worked.
- 5.8.1 ~~If an employee completes a 40-hour workweek, the appropriate rate for call back pay is 1.5. If the employee does not complete a 40-hour workweek, the appropriate rate is 1.0. All paid absences shall be deemed time worked for purposes of determining if the employee completed his/her 40-hour workweek.~~
- 5.9 Standby Pay. Employees who are required to perform standby duty shall be credited with one (1) hour compensation at the appropriate rate (1.5) for each eight (8) hour shift they the employee perform standby duty. In the event that the employee is called back to work, they shall be entitled to the compensation provided by Section 5.89 above, in addition to in lieu of the one-hour of standby compensation for that eight (8) -hour shift.
- 5.9.1 ~~If an employee completes a 40-hour workweek, the appropriate rate for standby pay is 1.5. If the employee does not complete a 40-hour workweek, the appropriate rate is 1.0. Standby pay is not deemed as actual hours worked for the purpose of calculating eligibility for overtime.~~

Walter H. [Signature]  
1/22/14

[Signature]  
1/22/14

**2013 CITY OF SAN JOSE – OE#3 NEGOTIATIONS  
MEDIATOR'S RECOMMENDED SETTLEMENT**

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**LEAVES OF ABSENCE**

City Proposed Language:

**ARTICLE 13 LEAVES OF ABSENCE**

- 13.7 Voluntary Separation From Employment. Any employee who is absent without notification to the Department Director or other designated authority, for two (2) consecutive work shifts, shall be considered a voluntary separation from employment unless the failure to report, as determined by the City, is due to extenuating circumstances beyond the control of the employee. An employee will be considered to be absent without notification pursuant to this Section, if notification is not provided prior to the commencement of the second consecutive shift.

*William H. Pelt*  
1/22/14

City of San Jose  
January 22, 2014

*Bahembu*  
1/22/14

**2013 CITY OF SAN JOSE – OE#3 NEGOTIATIONS  
MEDIATOR'S RECOMMENDED SETTLEMENT**

**DISABILITY LEAVE SUPPLEMENT**

City Proposed Language:

**ARTICLE 19 DISABILITY LEAVE**

**19.1 Disability Leave Supplement**

Disability Leave Supplement (DLS) is the benefit provided pursuant to this Article, which when added to Workers' Compensation Temporary Disability (WCTD) results in providing employees 85% of their regular base salary. Effective the first pay period following ratification by the membership and approval by the City Council employees shall no longer be eligible to receive DLS.

**19.10 Integration**

After the maximum time limit specified in Article 19.6, and effective the first pay period following ratification by the membership and approval by the City Council, the integration of an employee's available leave will occur in the following order: (1) accrued Vacation hours, (2) earned Compensatory Time once Vacation has been exhausted, and (3) accrued Sick Leave once Vacation and Compensatory Time have been exhausted.

- In no event shall an employee receive an amount, including any Workers' Compensation Temporary Disability payments, in excess of the employee's regular base salary.

Wilbur H. Cole  
1/22/14

City of San Jose  
January 22, 2014

Bachemski  
1/22/14

2013 CITY OF SAN JOSE – OE#3 NEGOTIATIONS  
MEDIATOR'S RECOMMENDED SETTLEMENT

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**SUBSTANCE ABUSE POLICY**

**ARTICLE 31 SUBSTANCE ABUSE TREATMENT PROGRAM**

City Proposed Language:

31.1 ~~Full-time and permanent benefited part-time employees are eligible for substance abuse treatment benefits and are subject to the terms and conditions of the negotiated OE#3 Substance Abuse Policy (Exhibit II). Substance Abuse Program. Full-time employees, and part-time employees eligible for benefits under Section 22.1 of this agreement, shall be eligible for substance abuse treatment benefits and are subject to the terms and conditions of the City of San Jose Substance Abuse Program & Policy.~~

Exhibit II

Exhibit II, Substance Abuse Program and Policy will be removed in the contract. City Policy Manual Section 1.4.2 will apply to employees represented by OE#3.

Will H. [Signature]  
1/22/14

City of San Jose  
January 22, 2014

[Signature]  
1/22/14



**2013 CITY OF SAN JOSE – OE#3 NEGOTIATIONS  
MEDIATOR'S RECOMMENDED SETTLEMENT**

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**OVERTIME CALCULATION**

Proposed Language:

6.6 Hours assigned and worked in excess of forty (40) hours per week shall be compensated by overtime pay or compensatory time at 1.5 times the hourly rate for the number of overtime hours worked. Paid time off, with the exception of holiday leave, shall not be considered time worked for the purpose of calculating eligibility for overtime.

6.6.1 Notwithstanding 6.6 above, any full-time employee who works in excess of twelve (12) continuous hours shall receive two times the base hourly rate for all hours worked in excess of twelve (12) continuous hours. Notwithstanding 6.1, to be eligible for double time, paid absences shall not count towards determining eligibility for overtime at the 2.0 rate.

6.6.2 Double Backs. All double-backs (two non-consecutive shifts of at least eight (8) hours each within a 24-hour period) at the Water Pollution Control Plant will be compensated by a four hour premium (recorded as 1.0 OOT). This provision applies only to employees who work in a twenty-four (24) hour operation at the Water Pollution Control Plant and excludes employees who voluntarily shift trade, but includes relief personnel and shift changes.

*William H. Poff*  
1/22/14

City of San Jose  
January 22, 2014

*J. Schenker*  
1/22/14

## 2013 CITY OF SAN JOSE - OE#3 NEGOTIATIONS

### CITY PROPOSAL #20 - HOUSEKEEPING

City Proposed Language:

#### Article 5 - WAGES AND SPECIAL PAY

5.18 ~~Eligibility for Benefits.~~ Any employee holding a position in any classification which is assigned to Representation Unit 6 who is temporarily assigned to a supervisory position in a classification which is not assigned to that Unit, shall receive not less than the economic benefits provided by this Memorandum of Agreement for the applicable Unit during their absence.

#### Article 6 - HOURS OF WORK AND OVERTIME

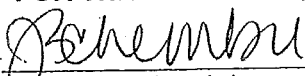
6.3.2 A department may change the workday or work schedule in a section including the adoption of a four day, ten hour per day schedule, or, at the Water Pollution Control Plant, a 12-hour shift schedule, if it determines such schedule is in the City's best interest. Any employee who initiates or is placed on an alternative work schedule after March 31, 1993 will be subject to the terms and conditions contained in Article 31-32 of this agreement.

#### Article 18 - SICK LEAVE

18.1.2.3 Anything in this Article to the contrary notwithstanding, an employee who, pursuant to the provisions of Article 19 of this Agreement, has been receiving temporary disability leave compensation and who has received the maximum allowable amount of such compensation pursuant to Article 19, and who is entitled to Workers' Compensation temporary disability benefits, and has exhausted all other available paid leave shall be permitted to utilize accrued sick leave subject to the following restrictions: Sick Leave shall be utilized in one-half hour fifteen (15) minute increments, but in no event shall an employee receive an amount, including any Workers' Compensation temporary disability compensation, in excess of such employee's regular base pay.

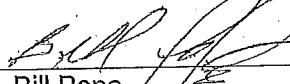
*\*This agreement is considered tentative and shall not be considered final or binding until a final agreement on all terms has been reached and both ratified by union members and approved by the City Council.*

FOR THE CITY:

  
Jennifer Schembri  
Deputy Director

5/1/13  
Date

FOR THE UNIONS:

  
Bill Pope  
Business Representative  
Operating Engineers, Local 3

5/1/13  
Date

2013 CITY OF SAN JOSE – OE#3 NEGOTIATIONS  
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**CITY PROPOSAL #4 – HIGHER CLASS PAY**

City Proposed Language:

**ARTICLE 5 WAGES AND SPECIAL PAY**

**5.4 Working in a Higher Classification.**

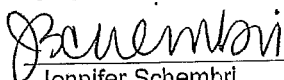
5.4.1 Upon specific written assignment by the Department Director or designee, an employee who is not on probation may be required to perform the duties of a higher classification. Such assignments shall be made to existing authorized positions which are not actively occupied due to the temporary absence of the regularly appointed employee or a vacant position. Assignments to a higher classification due to a vacancy shall not exceed six (6) months. Once an employee reaches the six (6) month maximum in a specific higher class assignment due to a vacancy, the employee shall not work in the same higher classification for at least six (6) months. The six month limitations do not apply to the temporary absence of the regularly appointed employee.

5.4.1.1 Employees specifically assigned in writing to duties of a higher classification, pursuant to section 5.4.1, shall be compensated at the rate in the salary range of the higher class which is at least one ~~(1)~~ salary rate/step ~~five percent (5%)~~ higher in the salary range schedule than the rate received by the employee in the employee's present class provided, however, that the employee shall not receive any compensation unless the assignment is for at least 50% or more of the scheduled shift or longer. Notwithstanding any other provision of this section, in no event shall an employee receive any amount in excess of the top of the salary range of the higher classification.

If the assignment is for at least 50% or more of the shift and the employee completes the assignment, they shall be compensated for the entire shift provided that the employee works the remainder of the shift and does not take paid or unpaid leave. If, as provided above, the employee is eligible for compensation at the higher rate, and following the higher class assignment, the employee takes paid or unpaid leave, the employee shall only be compensated at the higher rate for hours actually worked in the higher class.

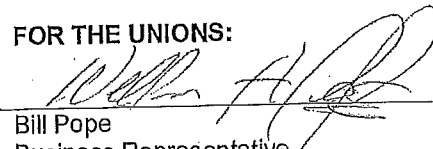
*\*This agreement is considered tentative and shall not be considered final or binding until a final agreement on all terms has been reached and both ratified by union members and approved by the City Council.*

FOR THE CITY:

  
Jennifer Schembri  
Deputy Director

5/22/13  
Date

FOR THE UNIONS:

  
Bill Pope  
Business Representative  
Operating Engineers, Local 3

5-22-13  
Date

**2013 CITY OF SAN JOSE – OE#3 NEGOTIATIONS  
TENTATIVE AGREEMENT**

**CITY PROPOSAL #10 – HOLIDAYS**

City Proposed Language:

**ARTICLE 16 HOLIDAYS**

16.1 Except as otherwise provided, each full-time employee who is on paid status before and after the holidays specified below shall be entitled to paid holiday leave on each of the following specified days, and on no other day, during the term of this Agreement:

New Year's Day  
Martin Luther King Day  
President's Day  
Cesar Chavez Day  
Memorial Day  
Independence Day  
Labor Day

Columbus Day  
Veterans Day  
Thanksgiving Day  
Day After Thanksgiving  
Christmas Eve Day  
Christmas Day  
New Years Eve Day

*\*This agreement is considered tentative and shall not be considered final or binding until a final agreement on all terms has been reached and both ratified by union members and approved by the City Council.*

**FOR THE CITY:**

Jennifer Schembri 5/22/13  
Jennifer Schembri Date  
Deputy Director

**FOR THE UNIONS:**

Bill Pope 5/22/13  
Bill Pope Date  
Business Representative  
Operating Engineers, Local 3

**2013 CITY OF SAN JOSE – OE#3 NEGOTIATIONS  
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**CITY PROPOSAL #16 – GRIEVANCE PROCEDURE**

City Proposed Language:

**ARTICLE 12 GRIEVANCE PROCEDURE**

12.1 Any dispute between the City and an Employee, or, where provided, the appropriate representative of the Union, regarding the interpretation or application of the written Memorandum of Agreement, or the interpretation or application of the Employer-Employee Resolution No. 39367, as amended, shall be considered a grievance. A grievance may be initiated only by the employee directly affected except as otherwise provided herein. Where the dispute directly affects a significantly large group of employees in the representation unit, the appropriate Union representative may file a grievance on behalf of such employee(s).

12.7.3 The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Mediation and Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators. Any costs associated with the mutually agreed upon joint request for a list of persons qualified to act as arbitrators from the State of California Mediation and Conciliation Service shall be divided equally between the parties. The City will process the joint request after receiving the Union's share of the cost for obtaining the list.

*\*This agreement is considered tentative and shall not be considered final or binding until a final agreement on all terms has been reached and both ratified by union members and approved by the City Council.*

**FOR THE CITY:**

Jennifer Schembri 5/22/13  
Jennifer Schembri Date  
Deputy Director

**FOR THE UNIONS:**

William H. Pope 5/22/13  
Bill Pope Date  
Business Representative  
Operating Engineers, Local 3

**2013 CITY OF SAN JOSE – OE#3 NEGOTIATIONS  
TENTATIVE AGREEMENT**

**CITY PROPOSAL #9 – HEALTH AND DENTAL IN LIEU**

**ARTICLE 5 WAGES AND SPECIAL PAY**

City Proposed Language:

5.7.2 The payment-in-lieu of health and/or dental insurance program is available to full-time employees who are not on a reduced workweek of less than thirty-five (35) regular work hours per week or unpaid leave and have alternate group health and/or dental coverage. To qualify, an employee must provide proof of alternate group coverage to Human Resources. Alternate coverage must be acceptable by the City.

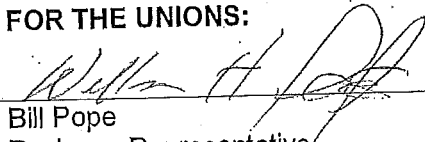
5.7.4 Payments for the in-lieu insurance program will be discontinued if an employee becomes ineligible for the program. An employee's ineligible status would include but not be limited to the following situations, employment status changes from full to part time, employee is on an unpaid leave of absence, employee is on a reduced workweek of less than thirty-five (35) regular work hours per week, or employee loses or does not have alternate insurance coverage. An employee whose in-lieu payments are discontinued may enroll, if eligible, in a health and/or dental plan during the next annual open enrollment period.

*\*This agreement is considered tentative and shall not be considered final or binding until a final agreement on all terms has been reached and both ratified by union members and approved by the City Council.*

**FOR THE CITY:**

 5/22/13  
Jennifer Schembri Date  
Deputy Director

**FOR THE UNIONS:**

 5-22-13  
Bill Pope Date  
Business Representative  
Operating Engineers, Local 3

CITY OF SAN JOSE – OE#3  
TENTATIVE AGREEMENT

**CITY PROPOSAL – RETIREE HEALTHCARE**

Proposed Language:

**ARTICLE 27 RETIREE HEALTHCARE FUNDING AND BENEFITS**

- 27.1 Effective June 28, 2009, the City and the Union ~~began transitioning~~ have agreed to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition ~~shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning~~ began on June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.3850 (C) (1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this Article.
- 27.2 The Municipal Code and/or applicable plan documents shall be amended to the extent necessary in accordance with this ~~agreement~~ agreement above.
- 27.3 The phase-in to the ARC shall be divided in five steps ~~(using a straight line method), each to be effective on the first pay period of the City's fiscal year in each succeeding year.~~ The first increment of the phase-in shall be which was effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of ~~each increase~~ the ARC may vary upward or downward. The Plan member cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year. For example, if the members' contribution rate is 4% of pensionable pay, the subsequent fiscal year's contribution rate for retiree healthcare cannot exceed 4.75% of pensionable pay. Notwithstanding the limitations on the incremental increases, ~~by the end of the five year phase-in,~~ the City and plan members shall be contributing the contribution rate based upon the full Annual Required Contribution, beginning on December 21, 2014. In subsequent fiscal years, the City and the plan members shall be contributing the full Annual Required

**CITY OF SAN JOSE – OE#3  
TENTATIVE AGREEMENT**

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Contribution in the ratio currently provided under Section 3.28.3850 (C) (1) and (3) of the San Jose Municipal Code.

27.4 The City has established a qualified 115 trust ("Trust"). Employee contributions will begin going into the Trust in time to avoid any potential of reaching the IRS limits on the existing medical benefits account or upon receipt of a ruling from the IRS that the contributions can be treated as pre-tax, whichever occurs first.

~~27.4 Until such time as a Trust is established, the City and employee contributions shall be made into the existing Medical Benefits Account for as long as the contributions can be made into the Medical Benefits Account in accordance with IRS limitations. If the Trust is not established prior to reaching the IRS limitation, the parties will meet to discuss alternative funding vehicles.~~

27.5 If employee contributions are deposited into the Trust prior to receiving a ruling from the IRS that the contributions can be treated as pre-tax and the City subsequently receives an IRS determination that the contributions should be treated as post-tax, the City agrees to indemnify any employee as to any IRS liability arising solely from the contributions that were taken as pre-tax prior to the IRS determination. The City and the Employee Organization will immediately meet and confer over an alternative trust vehicle for the prospective contributions should the IRS determine that the contributions are post-tax.

27.6 It is the objective of the parties that the Trust created pursuant to the above shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

27.7 Employees hired into full-time benefited positions on or after the first payperiod following the effective date of the ordinance implementing this provision ("Effective Date") will not participate in or be eligible for the defined benefit retiree healthcare program. The City will pay the unfunded liability contribution that these employees and the City would have otherwise paid had they gone into the retiree healthcare defined benefit program.

27.8 Neither the City nor the Employee Organization waives any rights or assertions, each may have, related to the retiree healthcare benefit through any of the provisions of this Article.

**ARTICLE 9 FULL UNDERSTANDING, MODIFICATION AND WAIVER**

9.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memorandums of Agreement, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.



**CITY OF SAN JOSE – OE#3**  
**TENTATIVE AGREEMENT**

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9.2 Existing benefits provided by ordinance or resolution of the City Council or as provided in the San Jose Municipal Code and which are referenced in the Agreement shall be provided in accordance with the terms of the Agreement.

9.3 It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Memorandum of Agreement be administered and observed in good faith.

9.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this agreement.

9.5 Healthcare Cost Mitigation.

9.5.1 Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over retiree healthcare benefits and funding upon request of either party, but no earlier than January 1, 2014. This may include but is not limited to alternatives to the unfunded liability and options for current employees that comply with IRS regulations.

9.5.2 Negotiations between the City and Employee Organization shall commence within 14 days upon notice of either party, but no earlier than January 1, 2014. The City and Employee Organization shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

5.5 Health Insurance

5.5.1 Effective January 1, 2014, all available plans will have a 4-tier rate structure (Employee, Employee plus spouse/domestic partner, Employee plus Child(ren) and Family). The premiums will be adjusted effective the first payperiod in payroll calendar year 2014, which starts December 22, 2013.

5.5.2 Effective pay date July 1, 2011, the City pays eighty five percent (85%) of the cost of the lowest priced plan for the employee or the employee and dependent coverage and the employee pays fifteen percent (15%) of the premium for the lowest priced plan. If the employee selects a plan other than the lowest priced plan, the employee pays the difference between the

**CITY OF SAN JOSE – OE#3**  
**TENTATIVE AGREEMENT**

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~~total cost of the selected plan and the City's contribution towards the lowest priced plan.~~

5.5.2 Effective December 23, 2012, the City pays eight-five percent (85%) of the cost of the lowest priced Non-Deductible HMO plan for the employee or the employee and dependent coverage and the employee pays fifteen percent (15%) of the premium for the lowest priced Non-Deductible HMO plan. If the employee selects a plan other than the lowest priced Non-Deductible HMO plan, the employee pays the difference between the total cost of the selected plan and the City's contribution toward the lowest priced Non-Deductible HMO plan.

*Effective January 1, 2013, Kaiser Permanente Deductible 1500 HMO Benefit Plan ~~3800~~ will be available to employees represented by OE#3 in addition to the existing plan options.*

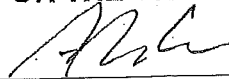
5.6 Dental Insurance. The City will provide dental coverage for eligible full time employees and their dependents in accordance with one of the two available plans. Effective January 1, 2014, all available plans will have a 4-tier rate structure (Employee, Employee plus spouse/domestic partner, Employee plus Child(ren) and Family). The premiums will be adjusted effective the first payperiod in payroll calendar year 2014, which starts December 22, 2013.

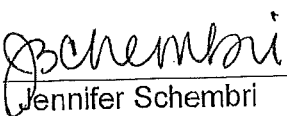
**CITY OF SAN JOSE – OE#3  
TENTATIVE AGREEMENT**


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*This agreement is considered tentative and shall not be considered final or binding until ratified by the membership and approved by the City Council. This document sets forth the full agreements of the parties reached during these negotiations. Anything not included in this document is not part of the Tentative Agreement. The provisions set forth above shall be incorporated in any successor Memorandum of Agreement.*

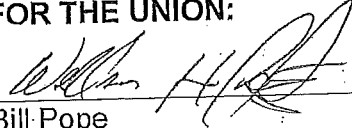
**FOR THE CITY:**

 6-11-13  
Date  
Alex Gurza  
Deputy City Manager

 6/11/13  
Date  
Jennifer Schembri  
Deputy Director of Employee Relations

 6/11/13  
Date  
Cheryl Parkman  
Executive Analyst  
Office of Employee Relations

**FOR THE UNION:**

 6/10/13  
Date  
Bill Pope  
Business Representative  
Operating Engineers, Local 3

## Side Letter Agreement

### RETIREE HEALTHCARE STAKEHOLDER SOLUTIONS WORKING GROUP AND NEGOTIATIONS

#### PURPOSE

The parties recognize the importance of funding the current retiree healthcare benefit, and since 2009, have been increasing contributions into the plan in order to begin paying the full Annual Required Contribution to ensure funding of the retiree healthcare benefit.

Neither the City nor the bargaining units have committed to close the plan. However, new employees will not enter the existing retiree healthcare plan. Since current employees share in paying the unfunded liabilities of the current retiree healthcare benefit, new employees who are not in the current plan would not be making those payments. The City has agreed to make the contributions towards the unfunded liabilities that those new employees would have paid had they been in the current plan. The City has agreed to do so in order to allow time for long-term solutions to be developed by a Retiree Healthcare Solutions Working Group ("Working Group") and negotiations.

The goal of the Working Group shall be to develop options that lead to long-term solutions to the retiree healthcare issue.

The City and the Coalition<sup>1</sup> have agreed to immediately continue working on solutions to retiree healthcare both through the Working Group and subsequent negotiations. The parties are committed to working collaboratively towards long-term solutions and have agreed to remain open to considering various options. The options considered will include, but are not limited to, the following:

- Using high-deductible healthcare plans in combination with individual health savings accounts;
- Limitations on the current retiree healthcare benefit in combination with individual health savings accounts;
- Tiered healthcare benefit structures based on length of employment;
- Modification of eligibility requirements;
- Health plan design and rate structure changes;
- Incentives for employees to work beyond normal retirement eligibility; and
- The inclusion or exclusion of new employees in any modifications, or the formation of a completely different plan for new employees.

---

<sup>1</sup> The San Jose Federated Labor Coalition consists of the following nine (9) bargaining units: Association of Building, Mechanical, and Electrical Inspectors (ABMEI), Association of Engineers and Architects (AEA), Association of Legal Professionals (ALP), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), Confidential Employees' Organization (CEO), International Brotherhood of Electrical Workers (IBEW), Municipal Employees' Federation (MEF) and International Union of Operating Engineers, Local #3 (OE#3).

## **RETIREE HEALTHCARE STAKEHOLDER SOLUTIONS WORKING GROUP**

### **Facilitator:**

By August 1, 2013, the City and the Coalition members will mutually agree on an independent person or entity that is knowledgeable in the area of retiree healthcare benefits to facilitate the Working Group.

The facilitator will facilitate the discussions, provide information to the parties, and generally assist in the development of options for long-term solutions. Upon the mutual agreement of the City and Coalition members, other subject matter experts may be engaged to assist in analyzing possible solutions.

The costs of the facilitator and any subject matter experts will be shared equally between the City and the Coalition members.

### **Participation:**

In addition to the City and a representative from each bargaining unit in the Coalition, members of the Working Committee will include a representative of the retirees, and any unrepresented employee group(s).

### **Meetings:**

The City and the Coalition will jointly schedule Working Group sessions in coordination with the facilitator. More frequent and longer Working Group sessions will be scheduled in the early stages of the process. The Working Group sessions will be open to employees and the public.

## **TIMELINE FOR RETIREE HEALTHCARE SOLUTIONS WORKING GROUP AND NEGOTIATIONS:**

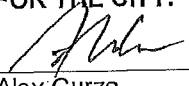
The Working Group shall agree upon a facilitator no later than August 1, 2013. The time period to schedule Working Group sessions will be from August 1, 2013, and conclude no later than December 31, 2013, unless the parties mutually agree to extend the timeframe. The City and the Coalition agree that this process will not supplant the meet and confer process regarding retiree healthcare.

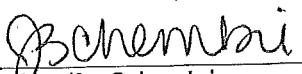
Negotiations between the City and the bargaining units shall commence within 14 days upon notice of either party, but no earlier than January 1, 2014. The City and the bargaining units shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply. The parties intend to meet and confer through coalition bargaining. However, all parties reserve their respective rights to withdraw from coalition bargaining. In such an event, the City and any bargaining unit that withdraws from the Coalition will bargain separately.

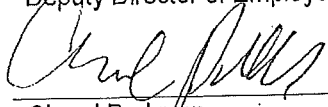
Side Letter Agreement  
Retiree Healthcare Stakeholder Solutions Working Group and Negotiations

This Side Letter Agreement is considered part of the tentative agreement on retiree healthcare with the bargaining units and shall become effective only as part of the overall retiree healthcare agreement. Each bargaining unit conducts separate ratification processes, and this Side Letter Agreement shall be effective for those bargaining units who ratify the overall tentative agreement on retiree healthcare and only during the term of those agreements with each respective bargaining unit.

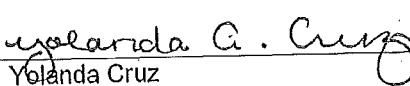
FOR THE CITY:

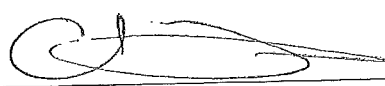
 6-11-13  
Date  
Alex Gurza  
Deputy City Manager

 6/11/13  
Date  
Jennifer Schembri  
Deputy Director of Employee Relations

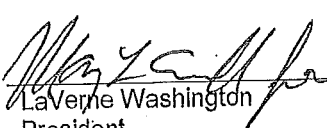
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Date  
Cheryl Parkman  
Executive Analyst  
Office of Employee Relations

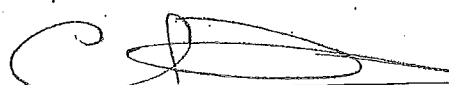
FOR THE UNION:

 6/10/13  
Date  
Yolanda Cruz  
President  
MEF, AFSCME Local 101

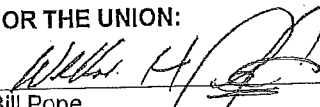
 6/10/13  
Date  
Charles Allen  
Business Agent  
AFSCME, Local 101

FOR THE UNION:

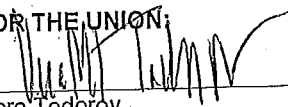
 6/10/13  
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Laverne Washington  
President  
CEO, AFSCME Local 101

 6/10/13  
Date  
Charles Allen  
Business Agent  
AFSCME, Local 101

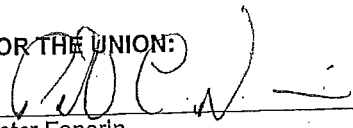
FOR THE UNION:

 Date  
Bill Pope  
Business Representative  
Operating Engineers, Local 3

FOR THE UNION:

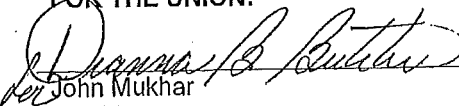
 6/13/13  
Date  
Vera Todorov  
President  
ALP

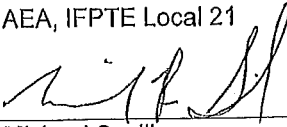
FOR THE UNION:

 6/10/13  
Date  
Peter Fenerlin  
President  
ABMEI

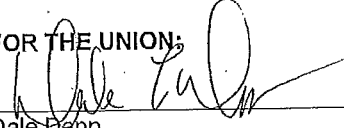
Side Letter Agreement  
Retiree Healthcare Stakeholder Solutions Working Group and Negotiations


FOR THE UNION:

  
John Mukhar  
President  
AEA, IFPTE Local 21  
6/10/13  
Date

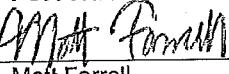
  
Michael Seville  
Acting Senior Representative  
IFPTE, Local 101  
6/10/13  
Date

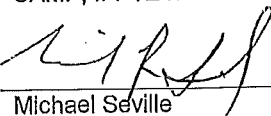
FOR THE UNION:

  
Dale Dapp  
President  
AMSP, IFPTE Local 21  
6/10/2013  
Date

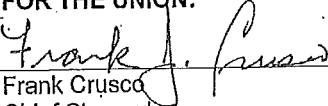
  
Michael Seville  
Acting Senior Representative  
IFPTE, Local 101  
6/10/13  
Date

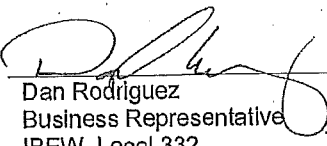
FOR THE UNION:

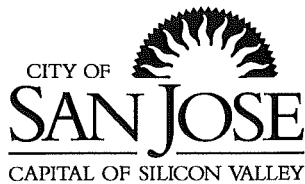
  
Matt Farrell  
President  
CAMP, IFPTE Local 21  
6/10/2013  
Date

  
Michael Seville  
Acting Senior Representative  
IFPTE, Local 101  
6/10/13  
Date

FOR THE UNION:

  
Frank Crusco  
Chief Steward  
IBEW, Local 332  
6-10-13  
Date

  
Dan Rodriguez  
Business Representative  
IBEW, Local 332  
6/10/13  
Date



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** David Sykes

**SUBJECT:** SEE BELOW

**DATE:** January 21, 2014

Approved

Date

1/27/14

**COUNCIL DISTRICT: 7**

**SUBJECT: REPORT ON BIDS AND AWARD OF CONSTRUCTION CONTRACT  
FOR THE 5980 - ROBERTO ANTONIO BALERMINO PARK PROJECT**

## RECOMMENDATION

Report on bids and award of a construction contract for 5980 - Roberto Antonio Balermينو Park to the sole bidder, Suarez & Munoz Construction, Inc., in the amount of \$1,789,000, and approve a five percent contingency in the amount of \$89,450.

## OUTCOME

Approval of this construction contract will allow for the construction of Roberto Antonio Balermينو Park. Approval of a five percent contingency will provide funding for any unanticipated work that may be necessary for the completion of the project.

## BACKGROUND

The Roberto Antonio Balermينو Park project site is an existing vacant 1.8 acre parcel, which is bounded to the north and west by the Almaden Family Apartment complex on Almaden Road. A sound wall and fire lane bound the southern edge and Almaden Road abuts the eastern edge. The surrounding neighborhood is comprised of predominantly moderate to high density apartments and light industrial uses. The park site was acquired by the City through the City's Parkland Dedication Ordinance requirements for residential developments on December 23, 2008.

Community meetings with the Almaden Road neighborhood were held in 2007 and 2008 to reach consensus on a Park Master Plan. The Alma Neighborhood Action Council and the Washington Area Community Coalition also had input during the community outreach process, which resulted in the Master Plan that was the basis for this project. The Roberto Antonio



Balermينو Park Master Plan was approved by the Parks and Recreation Commission on November 5, 2008. This park was originally named Almaden Road Park, but a name change was recommended on behalf of the Alma Neighborhood Action Committee and the Muwekma tribe and approved by Council on December 1, 2009. City staff worked closely with these entities to bring about the name change.

The new park amenities will include children's play areas, open passive turf area, a basketball court, walkways, benches, picnic tables, shade structures, park signage, security lighting, planting, irrigation and various other site furnishings. The park site is visually defined by a paved and resilient surface plaza with a graphic design that echoes an Ohlone basket weaving tradition.

As a tribute to the Park's namesake, an interpretive sign panel will educate the community about Roberto Antonio Balermينو. Mr. Balermينو was born circa 1782 to Ohlone-speaking parents and grew up within Mission Santa Clara. By 1844, he owned property in the vicinity of this park and herded livestock there. He built a one-bedroom adobe on his property which is still standing at 770 Lincoln Avenue near Willow Glen.

## **ANALYSIS**

Bids were opened on December 19, 2013, with the following results.

<u>Contractor</u>	<u>Total Bid</u>	<u>Variance Amount</u>	<u>Over/ (Under) Percent</u>
<b>Engineer's Estimate</b>	<b>\$1,746,000</b>	---	---
Suarez & Munoz Construction, Inc. (Hayward)	\$1,789,000	\$43,000	2

Suarez & Munoz Construction, Inc. submitted the sole bid in the amount of \$1,789,000, which is two percent over the Engineer's Estimate. Staff considers this reasonable for the work involved and recommends awarding to Suarez & Munoz Construction, Inc. Staff believes that the lack of multiple bidders may be attributable to a number of other projects bidding in this same time period. Suarez & Munoz Construction, Inc. has successfully completed a number of park and trail projects for the City over the past ten years and has a positive professional reputation among City staff. Commodore Park was recently completed by Suarez & Munoz Construction, Inc., on November 8, 2013.

Council Policy provides for a standard contingency of five percent on park projects. The standard contingency, which amounts to \$89,450 in this case, is considered appropriate for this project.

Construction is anticipated to begin in April with completion in December 2014.

### **EVALUATION AND FOLLOW-UP**

No additional follow up action with the Council is expected at this time.

### **PUBLIC OUTREACH/INTEREST**

- ✓ **Criterion 1:** Requires Council action on the use of public funds equal to \$1,000,000 or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item meets Criterion 1: Requires Council action on the use of public funds equal to \$1,000,000 or greater. To solicit contractors, this project was listed on Bidsync and advertised in the *San José Post Record*. This award memo will be posted on the City's website for the February 11, 2014 Council agenda. Several updates on the project during the design phase were posted on Twitter (SanJoseTrails) and staff has met with representatives of the Ohlone nation and San Jose State University administration.

### **COORDINATION**

This memorandum and project have been coordinated with the Departments of Parks, Recreation and Neighborhood Services, and Planning, Building and Code Enforcement, the City Attorney's Office and the City Manager's Budget Office.

### **FISCAL/POLICY ALIGNMENT**

This project is consistent with the Council-approved Budget Strategy Economic Recovery section in that it will spur construction spending in our local economy.

### **COST SUMMARY/IMPLICATIONS**

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT:

Project Delivery	\$ 530,435 *
Construction	1,789,000
Contingency	<u>89,450</u>
<b>TOTAL PROJECT COSTS</b>	<b>\$2,408,885</b>

Prior Year Expenditure	(\$211,577)
<b>REMAINING PROJECT COSTS</b>	<b>\$2,197,308</b>

\* A total of \$211,577 was expended or encumbered through Fiscal Year 2013 for Project Delivery cost.

2. COST ELEMENTS OF CONSTRUCTION CONTRACT:

Temporary Facilities, Mobilization, and SWPPP	\$110,000
Demolition and Site Clearing, Earthwork, Grading and Drainage	268,000
Rigid Paving, and Decomposed Granite, and court	335,000
Shade Structure and Trellis, Landscape walls and Site Furnishings	205,000
Playground Equipment and Playground Protective Surfacing	350,000
Electrical and lighting	140,000
Planting, Irrigation, and Miscellaneous Site Amenities	<u>381,000</u>
<b>TOTAL CONSTRUCTION CONTRACT AMOUNT</b>	<b>\$1,789,000</b>

3. SOURCE OF FUNDING: 385-Construction and Conveyance Tax Fund: Parks Purposes Council District 7

4. OPERATING COSTS: The new Roberto Antonio Balermينو Park will have an operating and maintenance impact of approximately \$21,600 annually starting in 2014-2015. These costs were included in the 2014-2018 Five-Year General Fund Forecast released in February 2013. Staff is currently reviewing these operating and maintenance costs as part of the 2015-2019 Five-Year General Fund Forecast.

### **BUDGET REFERENCE**

The table below identifies the fund and appropriations proposed to fund the contract recommended as part of this memo and remaining project costs, including project delivery, construction, and contingency costs.

Fund #	Appn #	Appn. Name	RC #	Total Appn	Amt. for Contract	2013-2014 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
<b>Remaining Project Costs</b>				<b>\$2,197,308</b>			
<b>Remaining Funding Available</b>							
385	7423	Roberto Antonio Balermينو Park	172175	\$2,288,000	\$1,789,000	V-423	10/08/2013 Ord. No. 29320
<b>Total Current Funding Available</b>				<b>\$2,288,000</b>	<b>\$1,789,000</b>		

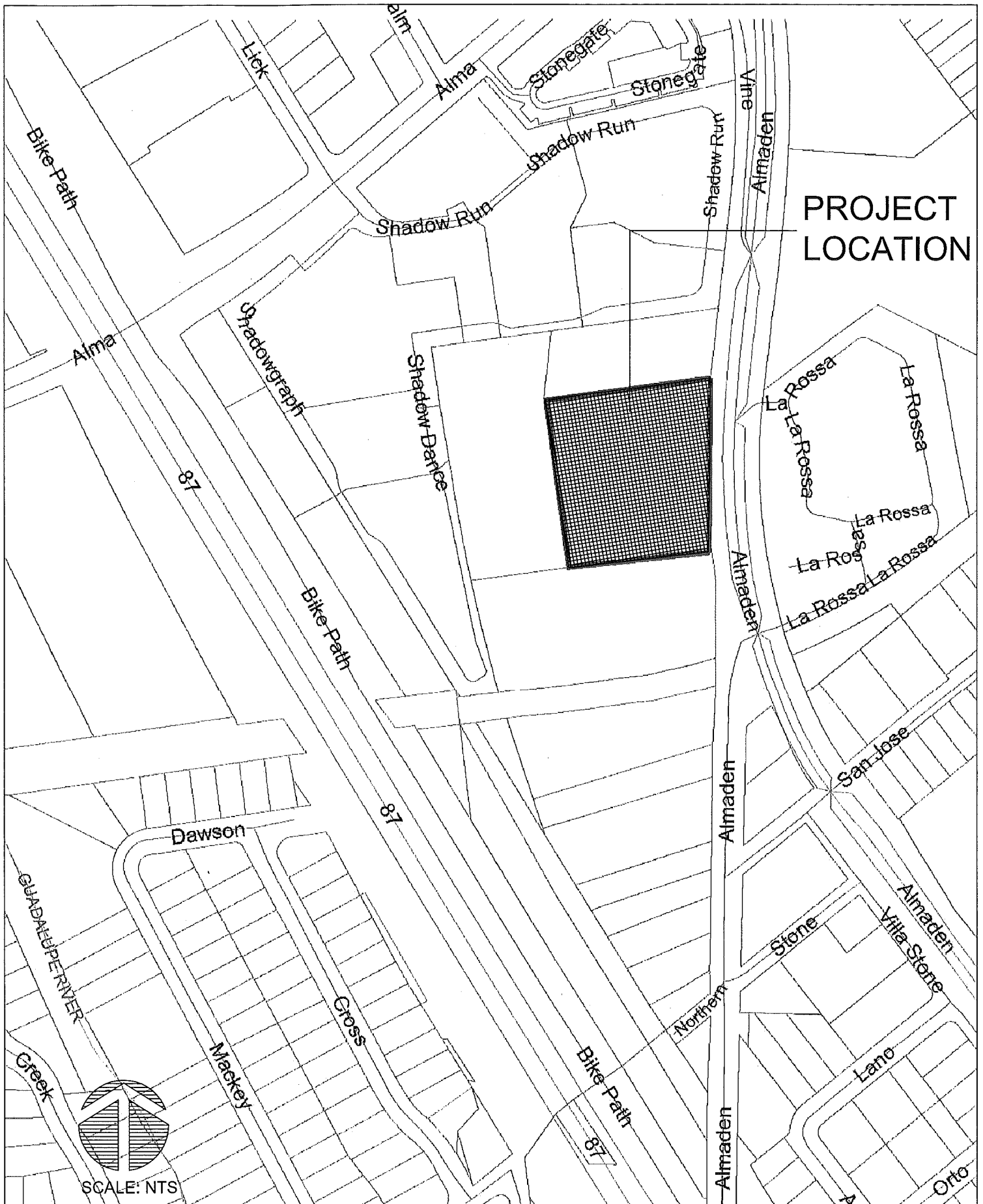
**CEQA**

Exempt, File No. PP08-166

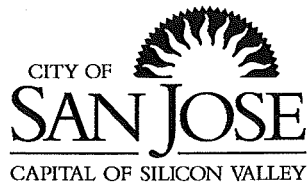
/s/  
DAVID SYKES  
Director of Public Works

For questions, please contact Barry Ng, Deputy Director, at 408-535-8300.

Attachment: map  
RR:jp:as



**ROBERTO ANTONIO BALERMINO PARK  
VICINITY MAP**



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** David Sykes

**SUBJECT:** SEE BELOW

**DATE:** January 21, 2014

Approved

Date

1/29/14

**SUBJECT: APPROVAL OF A LIST OF ENERGY AND UTILITY CONSERVATION MEASURES FOR IMPLEMENTATION AND APPROVAL OF AN ENERGY SERVICES AGREEMENT WITH CHEVRON ENERGY SOLUTIONS TO IMPLEMENT THE CONSERVATION MEASURES**

## RECOMMENDATION

- A. Adopt a resolution approving for implementation the energy and utility conservation measures ("ECMs") identified by Chevron Energy Solutions in Bundle 1A, and authorizing the Director of Public Works to do the following contingent upon the City obtaining the necessary financing and subject to the appropriation of funds:
1. Negotiate and execute a Bundle 1A Energy Services Agreement with Chevron Energy Solutions to implement the Bundle 1A ECMs for a maximum compensation of \$2,979,320;
  2. Establish a 15% contingency for the Bundle 1A Energy Services Agreement in the amount of \$424,398; and
  3. Negotiate and execute one or more amendments to the Bundle 1A Energy Services Agreement to increase the maximum compensation by an aggregate amount not to exceed the contingency to pay for any unexpected work necessary to complete the project.
- B. Adopt a resolution authorizing the Director of Public Works to do the following contingent upon the City obtaining the necessary financing and subject to the appropriation of funds:
1. Approve for implementation the ECMs identified by Chevron Energy Solutions in draft Bundle 1B if the Director concurs with Chevron Energy Solutions' analysis that the ECMs are feasible.

2. Negotiate and execute a Bundle 1B Energy Services Agreement with Chevron Energy Solutions to implement Bundle 1B for a maximum compensation of \$18,113,709 contingent on each of the following:
  - a. The Director approving the ECMs identified in draft Bundle 1B;
  - b. Chevron Energy Solutions having completed implementation of Bundle 1A in accordance with the Bundle 1A Energy Services Agreement and the Director's determination that the performance of the Bundle 1A ECMs are providing the utility/energy savings set forth in the applicable investment grade audit prepared by Chevron Energy Solutions; and
  - c. Chevron Energy Solutions completes Bundle 1A on schedule and at a cost that does not exceed Chevron's cost estimates, and provides quality work and customer service as determined by the Director of Public Works.
3. Establish a 15% contingency for the Bundle 1B Energy Services Agreement in the amount of \$2,717,056.
4. Negotiate and execute one or more amendments to the Bundle 1B Energy Services Agreement to increase the maximum compensation by an aggregate amount not to exceed the contingency to pay for any unexpected work necessary to complete the project.

## **OUTCOME**

Staff's recommendation will allow Chevron Energy Solutions ("Chevron") to implement the energy and utility conservation measures (ECMs) in Bundle 1A if the City obtains the necessary financing and subject to the appropriation of funds. The utility cost savings resulting from implementing the ECMs in Bundle 1A are projected to *exceed* the cost of implementing the improvements. Staff intends to eventually recommend using any additional utility cost savings to help fund other ECMs.

In addition, Staff's recommendation would enable Chevron to implement the ECMs in Bundle 1B if the City obtains the necessary financing and subject to the appropriation of funds, and if the Director does the following: (a) concurs with Chevron's conclusion that the projects in Bundle 1B are feasible, and (b) determines that implementation of the ECMs in Bundle 1A are performing as set forth in the investment grade audit as prepared by Chevron, and (c) Chevron completes Bundle 1A on schedule and at a cost that does not exceed Chevron's cost estimates, and provides quality work and customer service as determined by the Director of Public Works..

January 21, 2014

Subject: Approval of Utility Conservation Measures and Energy Services Agreement

Page 3

Staff's recommendation will assist the City towards achieving the following four Green Vision goals:

- Goal # 2 - Reduce Per Capita Energy Use by 50%
- Goal # 3 - Receive 100% of Electrical Power from Clean, Renewable Sources
- Goal # 4 - Build or Retrofit 50 Million Square Feet of Green Buildings
- Goal # 9 - Plant 100,000 New Trees and Replace 100% of Streetlights with Smart, Zero Emission Lighting

### **EXECUTIVE SUMMARY**

On May 22, 2012, the City Council directed staff to develop a Request for Proposals (RFP) to obtain energy management services to improve energy efficiency and reduce operational costs in City buildings and streetlights. The RFP process resulted in the selection of Chevron as the City's Energy Service Company (ESCO). With an initial Program Development Agreement, Chevron performed facility audits and streetlight surveys in order to understand the City's current infrastructure and utility usage and to make recommendations for energy and utility equipment improvements. Chevron summarized the audit and survey results, and provided recommendations for equipment upgrades, in an Investment Grade Audit presented to the City in November 2013.

In reviewing the Investment Grade Audit, staff has deemed a portion of the projects (Bundle 1A) feasible for implementation. Chevron will be required to design and engineer these projects, as well as manage the procurement and construction of these measures, at an estimated cost of \$2,979,320. Staff is requesting City Council to authorize the Director of Public Works to negotiate and execute an Energy Services Agreement with Chevron to implement Bundle 1A for a maximum compensation of \$2,979,320, and to establish a project contingency if needed. Staff is also requesting City Council to authorize the Director of Public Works to negotiate and execute a separate Energy Services Agreement with Chevron to implement the remaining energy improvement measures identified in the Investment Grade Audit (Bundle 1B) for a maximum compensation of \$18,113,709, and to establish a project contingency if needed, dependent on the Director of Public Works approving of the projects identified in Bundle 1B and Chevron completing the implementation of Bundle 1A on schedule and at a cost that does not exceed Chevron's estimates, with Bundle 1A providing the utility and energy savings identified in the Investment Grade Audit. The execution of the 1A and 1B Energy Services Agreements are subject to the City obtaining financing and the appropriation of funds, as summarized in this memorandum.



## **BACKGROUND**

In accordance with Council direction on May 22, 2012, staff released a RFP in July 2012 to solicit an energy services company that could identify and implement ECMs in which the estimated utility cost savings of the ECMs would exceed the cost of implementing the ECMs. In August 2012, six separate energy services companies submitted responses to the RFP, with Chevron Energy Solutions ranking highest after all proposals were assessed by the City's evaluation team. As a result, the City has pursued an utility/energy savings program with Chevron that involves two basic phases.

### **A. Phase 1 – Program Development Agreement**

Phase 1 is implemented through a Program Development Agreement with Chevron, which the Council approved on February 12, 2013. Phase 1 involves Chevron identifying and analyzing potential ECMs to implement. The maximum compensation under the Program Development Agreement is \$150,000.

Under the Program Development Agreement, Chevron performs a *preliminary analysis* in which it surveys various City facilities to identify potential ECMs. The preliminary analysis includes initial general reviews of utility usage per facility, operations at the sites, site size, and site age. Based on the initial general reviews, Chevron coordinates with City staff to determine which facilities have the potential for ECMs that could create energy and utility cost savings.

Under the Program Development Agreement, Chevron performs an Investment Grade Audit (IGA) of potential ECMs identified during the preliminary analysis. The IGA is a more comprehensive analysis of the City facilities and potential ECMs. The purpose of the IGA is to identify and develop "bundles" of ECMs that are feasible.

Under the Program Development Agreement, for a bundle of ECMs to be considered feasible, the estimated utility savings over the financing period of each ECM, when aggregated, must equal or exceed the estimated total capital outlay and other expenses associated with developing and implementing the ECMs. Chevron prepares an estimate of the energy savings associated with each ECM using an accepted industry standard (ASHRAE), and/or proprietary state-of-the-art analysis methods, to develop their results.

Importantly, not every individual ECM included in a bundle must have a projected savings that exceeds the projected cost of implementing that individual ECM. For example, the replacement of a chiller unit may not create sufficient projected utility/energy savings to pay for the cost of the procurement and installation of the equipment. In such situations, it might be possible to "bundle" the chiller replacement work with other ECMs to create an overall package that is feasible.

In accordance with the current Program Development Agreement, Chevron performed a preliminary analysis of 19 different City sites and a survey of energy usage from a portion of the

City's existing streetlights. Chevron then performed an IGA of the potential ECMs identified in the preliminary analysis. In November 2013, Chevron provided the City with a final draft of the IGA identifying two bundles of ECMs: Bundle 1A and Bundle 1B. The City has had an opportunity to carefully review Bundle 1A and is still in the process of reviewing Bundle 1B.

## **B. Phase 2 – Implementing ECMs through an Energy Services Agreement**

Phase 2 of the utility/energy savings program that the City is pursuing with Chevron involves the City making the decision whether to implement one or more feasible bundles of ECMs identified by Chevron following Phase 1. The City is not obligated to implement any feasible bundles of ECMs identified by Chevron during Phase 1.

The decision to implement one or more bundles of ECMs would involve the City entering into an implementation agreement with Chevron – referred to as Energy Services Agreement – for each bundle the City wants to implement. Since executing the Project Development Agreement, the City and Chevron have been negotiating the general terms and conditions of a form Energy Services Agreement that would be used to implement feasible bundles of ECMs. The parties have contemplated that a separate Energy Services Agreement would be used to implement each bundle of ECMs that the City decides to implement.

Implementation of a bundle of feasible ECMs also would require the City to develop a financing plan to fund all project delivery costs, including the procurement and installation of the ECMs, City project management costs, and Chevron overhead costs. The City would need to obtain the necessary financing and appropriate funds before proceeding with implementation of a bundle of ECMs.

## **ANALYSIS**

### **A. ECMs in Bundle 1A**

Staff directed Chevron to develop a smaller set of projects, in terms of implementation costs and technical complexity, for the first grouping of ECMs (Bundle 1A) in order to evaluate Chevron's ability to identify feasible projects and realize energy savings. In reviewing the identified ECMs with Chevron, staff accepted the project listing within Bundle 1A, which includes interior and exterior lighting retrofits, mechanical system improvements, LED streetlight conversions, and solar photovoltaic installations. The specific ECMs contained in Bundle 1A, their anticipated useful life, anticipated energy savings, and the estimated cost of implementation are included in Attachment A of this memorandum. Staff concurs with Chevron's conclusion that implementation of Bundle 1A is "feasible" and therefore is recommending that the Council approve the implementation of these ECMs.

## 1. Estimated Bundle 1A Implementation Costs

The estimated **total** implementation cost of the ECMs in Bundle 1A will be approximately \$3,408,932. The following table summarizes the total implementation costs for Bundle 1A:

<b><u>Estimated Cost to Implement Bundle 1A</u></b>	
City Project Management Costs	\$ 419,612
Financial Advisory Fee	\$ 10,000
<b>Total City Costs</b>	<b>\$ 429,612</b>
ECM costs (procurement/installation)	\$2,042,830
Chevron Project Costs and Profit	\$ 786,490
(38.5% of the ECM costs on the previous line item)	
IGA Cost	\$ 150,000
<b>Total Chevron Costs</b>	<b>\$2,979,320</b>
<b>Total Financed Costs</b>	<b>\$3,408,932</b>

In the IGA, Chevron calculated the cost of financing Bundle 1A by assuming a financial term of 17 years at a 3.25% interest rate. When these financing costs are included, the total cost of implementing Bundle 1A, without the purchase of a guarantee, is approximately \$4.4 million.

## 2. Estimated Bundle 1A Net Savings

In the IGA, Chevron includes the City's receipt of PG&E rebates of approximately \$170,000 in calculating the savings to the City resulting from implementing the ECMs in Bundle 1A.

Chevron's IGA also calculates anticipated energy cost savings resulting from implementing Bundle 1A by comparing the energy use of existing equipment to the anticipated energy use of the proposed ECMs over the useful life of the ECMs. Using this approach, Chevron estimates that the annual energy use reduction resulting from all ECMs in Bundle 1A will be approximately 992,000 kilowatt-hours and 200 therms.

To determine the actual dollar savings resulting from the reduction in energy use, Chevron's IGA assumes that PG&E rates will increase at the rate of 4.5% annually over the life of the ECMs. Using this assumption, the net future value of the energy cost savings, net of implementation costs, is estimated at \$900,000 over the useful life of the ECMs. A chiller replacement project is proposed within Bundle 1A for the San José Museum of Art. While the City is responsible for capital maintenance at this facility, the resulting utility cost savings of approximately \$73,000 over the life of the chiller, which is an additional savings beyond the main bundle savings of \$900,000, will be recognized by the San José Museum of Art as this is a non-City operated facility that is responsible to pay utility costs.

City staff also calculated the net energy cost savings using a more conservative PG&E cost escalation factor of 3% annually. Even using this significantly lower escalation rate, the net future value of the energy cost savings to the City over the life of the ECMs is estimated to be \$641,000, with an additional utility cost savings of \$52,000 for the chiller replacement ECM at the San José Museum of Art, which is an additional savings beyond the main bundle savings of \$641,000.

Significantly, the estimated total utility cost savings reflect estimated savings over the useful life of all the ECMs in Bundle 1A. Chevron anticipates that the useful life of the ECMs will exceed the financing term. As such, much of the estimated utility savings comes at the tail end of the life of the ECM bundle, when the financing has already been paid off and the City continues to receive utility savings from the ECMs for several years afterward.

Given the estimated net savings from implementing the ECMs in Bundle 1A, City staff is recommending going forward with the implementation of Bundle 1A.

### **3. Bundle 1A Energy Services Agreement**

Staff is requesting the City Council to delegate the authority to the Director of Public Works to negotiate and execute a Bundle 1A Energy Services Agreement with Chevron to implement the ECMs in Bundle 1A in an amount not to exceed \$2,979,320, and contingent on the City obtaining the necessary financing and subject to the appropriation of funds.

Under the Bundle 1A Energy Services Agreement, the City would pay Chevron for preparing the IGA in the total amount of \$150,000. This compensation is based on the City paying Chevron \$0.11 times the total number of square feet of the buildings or structures included in the IGA, and at the rate of \$125 an hour for all other facilities.

Under the Bundle 1A Energy Services Agreement, Chevron will be responsible for designing and engineering each of the ECMs and providing engineer's estimates of the cost of implementing each ECM. The agreement requires Chevron to design the ECM consist with the implementation costs for the ECM used by Chevron in the IGA. Moreover, Chevron can not proceed with implementing an ECM until the City has approved the design and engineering for the ECM.

The Bundle 1A Energy Services Agreement requires Chevron to implement the ECMs in accordance with the plans and designs approved by the City. Chevron also is responsible for hiring the contractors to perform the work necessary to implement the ECMs. Chevron must procure a contract for *non-construction* work in accordance with the City's procurement requirements for such work. Chevron will publicly bid all *construction* work and will pay construction workers in accordance with the City's prevailing wage policy.

If the cost of hiring a contractor to implement an ECM is more than 5% of Chevron's final cost estimate, then Chevron must obtain the City's consent to proceed. If the City does not give its consent, the parties will meet and confer on how to proceed, including rebidding, modifying the design and rebidding, and removing the work from the project.

Chevron estimates being able to implement the ECMs in Bundle 1A within three to six months after project procurement is complete.

Chevron's compensation under the Energy Services Agreement will consist of three components. The first component is a payment of \$150,000 for Chevron's completion of the IGA. This payment will be due in full as the work has been completed as part of the Program Development Agreement.

The other two components of compensation consist of the procurement and implementation cost of the ECMs, which as discussed above is estimated to be \$2,042,830, and Chevron's project costs and profits, which is 38.5% of the procurement and implementation cost or \$786,490 (\$2,042,830 x 38.5%). Chevron's project costs and profits of 38.5% is Chevron's cost for the management and implementation of the ECMs and can be broken down more specifically as follows:

<b><u>Project Task</u></b>	<b><u>Compensation (as a percent of the ECM procurement and implementation cost)</u></b>
Schematic Design	5% of ECM costs
Bidding	5% of ECM costs
General Requirements / Project Administration	1% of ECM costs
Project and Construction Management	6% of ECM costs
Commissioning	1.5% of ECM costs
Payment and Performance Bonds	1.6% of ECM costs
Overhead	10.5% of ECM costs
Contractor's Contingency	4.5% of ECM costs
Profit	3.4% of ECM costs
<b>TOTAL</b>	<b>38.5% of ECM costs</b>

Once the Energy Services Agreement is executed and financing has been secured and appropriated for the projects, Chevron will issue the City an invoice for 5% of the total cost of the ECMs for their schematic design work. After such design work is complete, Chevron will issue the City an additional invoice for 5% of the total costs of the ECMs to complete bidding work. And, once the bidding is complete, Chevron will invoice the City an additional 5% to begin construction mobilization. Once construction begins, Chevron will issue the City monthly progress invoices, which will be based on the percentage of construction services completed by Chevron the month prior and will be subject to verification by the City. Should the City agree to the work performed, the City shall make such payments to Chevron, less any retention amounts required.

Staff is also requesting the City Council to delegate authority to the Director of Public Works to establish a contract contingency in the amount of \$424,398, which is 15% of the maximum compensation amount of the Bundle 1A Energy Services Contract, excluding the IGA fee. This contingency would be used to pay for unexpected work necessary to complete the project, though use of the contingency will reduce the net cost savings to the City. Finally, staff is requesting that the Director be authorized to negotiate and execute amendments in the maximum compensation to pay for such unexpected work, provided that the aggregate of such amendments does not exceed the total amount of the contingency, i.e. \$424,398.

## **B. ECMs in Bundle 1B**

Chevron's Bundle 1B consists of a significantly larger package of ECMs. It includes additional solar photovoltaic systems, LED streetlights, and mechanical system improvements, as well as more technically complex ECMs, such as solar thermal systems and micro-cogeneration systems (combined heat and power). The specific ECMs contained in Bundle 1B, their useful life, anticipated energy savings, and cost of implementation are included in Attachment A of this memorandum.

### **1. Estimated Bundle 1B Implementation Costs**

The estimated **total** implementation cost of the ECMs in Bundle 1B is approximately \$20,786,704. The following table summarizes the total implementation costs for Bundle 1B:

#### **Estimated Cost to Implement Bundle 1B**

City Project Management Costs	\$ 2,662,995
Financial Advisory Fee	<u>\$ 10,000</u>
Total City Costs	\$ 2,672,995
ECM costs (procurement/installation)	\$13,078,490
Chevron Project Costs and Profit (38.5% of the ECM costs on the previous line item)	<u>\$ 5,035,219</u>
Total Chevron Costs	\$18,113,709
<b>Total Financed Costs</b>	<b>\$20,786,704</b>

In the IGA, Chevron calculated the cost of financing Bundle 1B by assuming a financial term of 17 years at a 3.25% interest rate. When these financing costs are included, the total cost of implementing Bundle 1B, without the purchase of a guarantee, is approximately \$27.0 million.

## **2. Estimated Bundle 1B Net Savings**

In the IGA, Chevron includes the City's receipt of PG&E rebates of approximately \$1,040,000 in calculating the savings to the City resulting from implementing the ECMs in Bundle 1B.

Chevron's IGA for Bundle 1B estimates that the reduction in energy and utility use resulting from implementing all the ECMs in Bundle 1B would be approximately 7.2 million kilowatt-hours and 352 hundred cubic feet (CCF) of water annually. Due to the technology of the micro-cogeneration systems, which uses natural gas as a fuel to produce electricity and heat, the City anticipates consuming an additional 61,000 therms annually by implementing this ECM, however, the utility cost savings by generating electricity and heat for consumption at the sites will outweigh the cost of purchasing additional natural gas.

Chevron's IGA for Bundle 1B estimates that the City's net future value of utility/energy savings over the life of the useful life of the ECMs in Bundle 1B is approximately \$12.0 million. As with Bundle 1A, much of the estimated utility savings comes at the tail end of the life of the ECM bundle, when the financing has already been paid off and the City continues to receive utility savings from the ECMs for several years afterward.

## **3. Director's Authority to Approve Bundle 1B**

Unlike with Bundle 1A, staff is not requesting Council to approve the Bundle 1B ECMs for implementation. The reason is that staff has not yet had an opportunity to complete its review of the IGA for Bundle 1B. During the design, engineering, and construction phase of **Bundle 1A**, staff will be completing its review of the feasibility of the projects proposed by Chevron in Bundle 1B.

Staff is requesting that the Council delegate authority to the Director of Public Works to approve the Bundle 1B ECMs provided that the Director concurs with Chevron's IGA analysis that the ECMs are feasible, and that the Director has determined that the performance of the Bundle 1A ECMs are providing the utility/energy savings predicted in the IGA. The Director's authority to approve the ECMs in Bundle 1B is also contingent upon the City obtaining the necessary financing, and the appropriation of funds, to implement the ECMs.

## **4. Bundle 1B Energy Services Agreement**

Staff is also requesting the Council to delegate authority to the Director of Public Works to negotiate and execute a Bundle 1B Energy Services Agreement with Chevron for the implementation of Bundle 1B for a maximum compensation of \$18,113,709. Except for provisions specific to the ECMs in Bundle 1B, the other material provisions of the agreement would be the same as those in the Bundle 1A Energy Services Agreement.

The Director's authority to execute a Bundle 1B Energy Services Agreement would be contingent on each of the following:

- The Director approving the ECMs identified in draft Bundle 1B, and the City obtaining the necessary financing and subject to the appropriation of funds to implement the ECMs, and
- Chevron having completed implementation of Bundle 1A in accordance with the Bundle 1A Energy Services Agreement, and
- The Director's determination that the performance of the Bundle 1A ECMs are providing the utility/energy savings predicted in the IGA for the ECMs; and
- Chevron completes Bundle 1A on schedule and at a cost that does not exceed Chevron's cost estimates, and provides quality work and customer service as determined by the Director of Public Works.

In the event the Director executes a Bundle 1B Energy Services Agreement, the requested delegation would also allow the Director of Public Works to establish a contingency of up to \$2,717,056, which is 15% of the maximum compensation under the energy services agreement. This contingency would be for the purpose of paying for unexpected work necessary to complete the project, though use of the contingency will reduce the net cost savings to the City. The delegation would include the authority for the Director to negotiate and execute amendments in the maximum compensation to pay for such unexpected work, provided that the aggregate of such amendments does not exceed the total amount of the contingency, i.e. \$2,717,056.

#### **C. Energy Services Agreement Cost Savings Guarantees**

The energy savings and utility cost savings in Chevron's IGA are based on preliminary design and engineering *estimates*. *Actual* energy and utility cost savings after the ECMs are installed may vary from the preliminary estimates. To minimize the risk that the actual cost savings are less than the estimated cost savings, the City can purchase separate "guarantees" from Chevron for various ECMs. The "guarantee" agreements tend to be expensive and relatively complicated, and generally contain a number of limitations. Staff is in the process of analyzing the value of various potential guarantees and intends to present the Council with a recommendation in a supplemental memorandum.

#### **D. Financing Plan for Implementing Bundles 1A and 1B**

One of the contingencies of the delegation of authority for the Director of Public Works to execute the Bundle 1A Energy Services Agreement and the Bundle 1B Energy Services Agreement is the City obtaining the necessary financing, and the appropriation of funds, to pay for the implementation of the ECMs. The City anticipates financing Bundles 1A and 1B through



the use of a master lease agreement with a third party lending institution, with a financing plan developed for funding draws of each bundle and repayments towards the lease. The financing will be structured to draw a maximum of \$30.0 million, in phases, which will accommodate the estimated total implementation costs of \$24.2 million for Bundles 1A and 1B, as well as contingencies if necessary and approved by the City.

Staff anticipates that the utility/energy cost savings resulting from implementing the ECMs will equal or exceed the amount of the lease payments to the lending institution to repay the funding draws. Importantly, however, if the actual utility/energy cost saving resulting from implementing the ECMs is less than the amount of the lease payments, the City would still be responsible for paying the full amount of the lease payments. The City will budget for the lease payments owed to the chosen lending institution based on the utility cost savings projected to result from the ECMs and is required to make the lease payments regardless of whether those utility cost savings are realized or not. The City will need to budget for the first year of lease payments owed to the lending institution as the energy savings from the implementation of the ECMs, and the associated rebates, will not be realized in time before the first year lease payments are due.

Staff is currently in the process of obtaining financing for implementing Bundles 1A and 1B and anticipates bringing approval of the master lease agreement forward to Council in the first half of 2014.

### **EVALUATION AND FOLLOW-UP**

Staff will manage Chevron's activities on the design, engineering, bidding, and implementation of the ECMs in Bundle 1A, and will evaluate the feasibility of the ECMs in Bundle 1B for potential acceptance. Staff may bring forward future ECM bundles to Council for further consideration depending on the success of Bundles 1A and 1B.

### **POLICY ALTERNATIVES**

**Alternative # 1:** Continue using existing City equipment and purchase electricity from PG&E.

**Pros:** By continuing to utilize existing City equipment, the City will not be required to manage Chevron's activities, thus reducing the need for staff resources for project management roles.

The City will also not be required to enter into a master lease agreement with a financial institution to fund new ECMs, thus reducing financial risk. And by continuing to purchase electricity from PG&E (as in the case by not installing solar photovoltaic systems), the City may incur lower energy costs over the financed term of the systems should the future escalation rates for PG&E be lower than the assumption used in the IGA.

**Cons:** The City will not benefit in energy savings (992,000 kilowatt-hours and 200 therms annually for Bundle 1A, and 7.2 million kilowatt-hours and 352 CCF for Bundle 1B), or utility cost savings (after lease payments and for the life of the ECMs; total savings of \$973,000 for

Bundle 1A and \$12.0 million for Bundle 1B). The City will also not be able to renew aging infrastructure or address some portion of the deferred maintenance backlog in a timely manner. And, PG&E pricing will fluctuate over time due to market conditions. Based on historical trends, the City is expecting to pay a higher price for power from PG&E over the financed term of the master lease agreement. The power purchased from PG&E is also primarily from fossil fuels, which are non-renewable sources.

**Reason for not recommending:** The City is anticipated to save nearly 8.2 million kilowatt-hours, 200 therms, and 352 CCF annually by implementing the ECMs in Bundle 1A and Bundle 1B, and save approximately \$13.0 million in utility cost savings over the life of the ECMs. This alternative does not align with the City's Green Vision goals of reducing per capita energy use, receiving 100% of electrical power from clean sources, building or retrofitting 50 million square feet of green buildings, and replacing 100% of streetlights with zero emission lighting.

**Alternative # 2:** The City could establish an internal team for evaluation of facilities to identify ECMs and potential projects.

**Pros:** By identifying a City team to evaluate facilities for energy improvements, the City will not be required to contract with Chevron, thus reducing contractor overhead costs.

**Cons:** The City would be required to perform all project related activities, including the identification of energy improvement opportunities, as well as the design, engineering, procurement, and installation of the ECMs, which would consume City staff resources.

**Reason for not recommending:** This direction is not recommended at this stage as Chevron seemingly provides expertise and resources not currently held within the City, especially in considering more complex technologies such as solar photovoltaic systems, solar thermal systems, micro-cogeneration systems, and thermal energy storage systems.

**Alternative # 3:** The City could utilize the details within the IGA and implement the ECMs on its own, without the project management of Chevron.

**Pros:** By implementing the energy improvements in-house, the City will not be required to contract with Chevron, thus reducing contractor overhead costs.

**Cons:** The City would be required to perform all project related activities, including the design, engineering, procurement, and installation of the ECMs, which would consume City staff resources. The City would also need to obtain necessary funding for such projects and would need to establish a financing plan. And, the City would still have to compensate Chevron for the completion of the IGA work, at a maximum amount of \$150,000.

**Reason for not recommending:** This direction is not recommended as the City does not have the resources to administer such work with existing resources, and would need to consider outsourcing the work to third party contractors, which Chevron has already been identified within the Program Development Agreement as becoming the City's general contractor for implementing the ECMs.

### **PUBLIC OUTREACH / INTEREST**

- ☒ **Criterion 1:** Requires Council action on the use of public funds equal to \$1,000,000 or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memorandum meets Criteria 1: Requires Council action on the use of public funds equal to \$1,000,000 or greater and will be posted on the City's website for the February 11, 2014 Council Agenda.

### **COORDINATION**

This memorandum has been coordinated with the City Manager's Office, the City Attorney's Office, the City Manager's Budget Office, the Department of Transportation, Planning, Building, and Code Enforcement, and the Finance Department.

### **FISCAL / POLICY ALIGNMENT**

This action is consistent with the City's Green Vision and the adopted 2013-2014 Budget Policies and Practices.

### **COST SUMMARY / IMPLICATIONS**

The maximum compensation for the Energy Services Agreement with Chevron to implement Bundle 1A is \$2,979,320. The City shall pay for such services through a master lease agreement with a third party lending institution. Subsequently, utility cost savings derived from implementing the ECMs shall be used to make lease payments back to the lending institution. Should the utility cost savings from the ECMs be less than the estimated savings as calculated in the IGA, the City will budget for the difference in cost as lease payments to the lending institution are required regardless if the savings from the ECMs can support the lease payments.

January 21, 2014

**Subject: Approval of Utility Conservation Measures and Energy Services Agreement**

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1. TOTAL AMOUNT OF RECOMMENDATION: \$2,979,320
2. COST OF AGREEMENT:

ECM costs	\$2,042,830
Chevron Project Costs and Profit	\$ 786,490
IGA Cost	<u>\$ 150,000</u>
Total Agreement Costs	\$2,979,320
3. SOURCE OF FUNDING: To be brought forward for Council approval with the established financing plan.
4. FISCAL IMPACT: The proposed costs of implementing Bundle 1A have been reviewed and are not anticipated to have significant impact on the General Fund operating budget once the ECMs have been installed and established to have successful energy and utility cost savings. Until the implementation of the ECMs is complete, a General Fund obligation of approximately \$200,000 may be needed to support the first year of lease payments.

#### **BUDGET REFERENCE**

Program budget details will be brought forward for Council review when the financing plan for the projects has been established.

#### **CEQA**

Exempt, File Nos. PP 13-111, PP 13-112, PP 13-113, PP 13-114, PP 13-115, PP 13-116, PP 13-117, PP 14-003, PP 14-004.

/s/

DAVID SYKES  
Director of Public Works

For questions, please contact Harry Freitas, Assistant Director of Public Works, at (408) 535-8488.

Attachment A - Energy Conservation Measure Bundles

**ATTACHMENT A**  
**CHEVRON ENERGY SOLUTIONS**  
**ENERGY CONSERVATION MEASURE BUNDLES**

**Bundle 1A**

ECM TYPE	PROJECT DESCRIPTION	SITE LOCATIONS	ESTIMATED LIFE CYCLE	ESTIMATED ANNUAL UTILITY SAVINGS	ESTIMATED IMPLEMENTATION COST*
Solar Photovoltaic Systems	Solar electric generation systems (solar panels) installed on metal canopies within parking lot areas	<ul style="list-style-type: none"> <li>▪ Fire Station # 2 (45.4 kW)</li> <li>▪ Fire Station # 34 (58.3 kW)</li> </ul>	25 years	135,987 kWh	\$324,400
Indoor Lighting Retrofits	Replacing older, inefficient lamps and controls to newer energy saving equipment	<ul style="list-style-type: none"> <li>▪ Bascom Library and Community Center</li> <li>▪ Berryessa Library</li> <li>▪ Edenvale Library</li> <li>▪ Fire Station # 2</li> <li>▪ Fire Station # 13</li> <li>▪ Fire Station # 34</li> <li>▪ Leining Center</li> <li>▪ Mayfair Community Center</li> <li>▪ Northside Community Center</li> <li>▪ Shirakawa Community Center</li> <li>▪ South Corporation Yard</li> </ul>	6 years	113,448 kWh	\$151,297
Outdoor Lighting Retrofits	Replacing older, inefficient lamps and controls to newer energy saving equipment	<ul style="list-style-type: none"> <li>▪ Bascom Library and Community Center</li> <li>▪ Berryessa Library</li> <li>▪ Fire Station # 2</li> <li>▪ Fire Station # 34</li> <li>▪ Mayfair Community Center</li> <li>▪ Police Administration Building</li> <li>▪ Shirakawa Community Center</li> </ul>	15 years	103,322 kWh	\$205,225
HVAC Package Unit Replacement	Replacing older, rooftop air conditioning equipment to newer efficient equipment	<ul style="list-style-type: none"> <li>▪ Shirakawa Community Center</li> </ul>	15 years	32,461 kWh and 199 therms	\$57,175
HVAC Chiller Replacement	Replacing older air conditioning equipment to newer efficient equipment	<ul style="list-style-type: none"> <li>▪ Museum of Art</li> </ul>	15 years	33,453 kWh	\$170,800
LED Streetlights	Converting older, inefficient low pressure sodium and high pressure sodium streetlights to energy saving LED lamps and controls	<ul style="list-style-type: none"> <li>▪ Edenvale area</li> </ul>	15 years	573,395 kWh	\$1,133,933

**ATTACHMENT A**  
**CHEVRON ENERGY SOLUTIONS**  
**ENERGY CONSERVATION MEASURE BUNDLES**

**Bundle 1B**

ECM TYPE	PROJECT DESCRIPTION	SITE LOCATIONS	ESTIMATED LIFE CYCLE	ESTIMATED ANNUAL UTILITY SAVINGS	ESTIMATED IMPLEMENTATION COST**
Solar Photovoltaic Systems	Solar electric generation systems (solar panels) installed on metal canopies within parking lot areas	<ul style="list-style-type: none"> <li>▪ Edenvale Library</li> <li>▪ Mayfair Community Center</li> <li>▪ Police Administration Building</li> <li>▪ Shirakawa Community Center</li> </ul>	25 years	2,440,079 kWh	\$5,223,150
Solar Thermal Systems	Solar heat collection panels installed on rooftop areas, and installation of pumping systems, providing hot water service to facility	<ul style="list-style-type: none"> <li>▪ Camden Community Center and Pool</li> <li>▪ Fire Station # 2</li> <li>▪ Fire Station # 13</li> <li>▪ Fire Station # 34</li> <li>▪ Mayfair Community Center</li> </ul>	25 years	12,091 therms	\$311,270
Micro-Cogeneration Systems	Ground mounted systems, using natural gas as fuel, to generate electricity and heat for facility use	<ul style="list-style-type: none"> <li>▪ Camden Community Center</li> <li>▪ Mayfair Community Center</li> </ul>	15 years	829,838 kWh and -80,046 therms	\$404,600
HVAC System Improvements and Retrocommissioning	Adjustment and re-tuning of existing air conditioning system controls and equipment to ensure proper and efficient operation, and installation of energy saving air conditioning equipment	<ul style="list-style-type: none"> <li>▪ Bascom Library and Community Center</li> <li>▪ Berryessa Library</li> <li>▪ Camden Community Center</li> <li>▪ Edenvale Library</li> <li>▪ Fire Station # 34</li> <li>▪ Mayfair Community Center</li> <li>▪ Museum of Art</li> <li>▪ Police Administration Building</li> <li>▪ Seven Trees Library / Community Center</li> </ul>	Varies	351,642 kWh and 6,140 therms	\$168,797
Water Efficiency Retrofits	Replacement of older, high flow water fixtures (urinals, sink aerators, shower heads) to water efficient models	<ul style="list-style-type: none"> <li>▪ Bascom Library and Community Center</li> <li>▪ Berryessa Library</li> <li>▪ Edenvale Library</li> <li>▪ Fire Station # 13</li> <li>▪ Leining Center</li> <li>▪ Northside Community Center</li> <li>▪ Police Administration Building</li> <li>▪ Seven Trees Library / Community Center</li> <li>▪ Shirakawa Community Center</li> <li>▪ South Corporation Yard</li> </ul>	Varies	718 therms and 352 CCF water savings	\$17,430

LED Streetlights	Converting older, inefficient low pressure sodium and high pressure sodium streetlights to energy saving LED lamps and controls	▪ Blossom Valley, Coyote, Seven Trees, Evergreen, and Monterey Business Corridor areas	15 years	3,522,284 kWh	\$6,953,243
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\* Bundle 1A ECM costs for procurement and installation only (\$2,042,830). Adding City soft costs (\$419,612), Financial Advisory Fee (\$10,000), IGA Fee (\$150,000), and Chevron Overhead / Profit (\$786,490), total financed cost for Bundle 1A is \$3,408,932. An additional one time amount of \$26,129, and annual fees of \$22,368, will be added to the total financed cost of Bundle 1A should the City decide to purchase energy saving guarantees for all ECMs.

\*\* Bundle 1B ECM costs for procurement and installation only (\$13,078,490). Adding City soft costs (\$2,662,995), Financial Advisory Fee (\$10,000), and Chevron Overhead / Profit (\$5,035,219), total financed cost for Bundle 1A is \$20,786,704. An additional one time amount of \$60,055, and annual fees of \$27,568, will be added to the total financed cost of Bundle 1B should the City decide to purchase energy saving guarantees for all ECMs.